



Deposition of:
Brian Gambrell

November 2, 2021

In the Matter of:
**Poole, Stacey Darlene Vs. Black
Slaughter & Black PA**

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 ROCK HILL DIVISION

4 STACEY DARLENE POOLE,

5 Plaintiff,

6 vs. CASE NO. 0:20-cv-3499-TLW

7 BLACK, SLAUGHTER & BLACK, PA,

8 Defendant.

9
10
11 DEPOSITION OF: BRIAN GAMBRELL
12 (Via videoconference)

13 DATE: November 2, 2021

14 TIME: 11:09 a.m.

15 WITNESS

16 LOCATION: Columbia, SC

17 TAKEN BY: Counsel for the Defendant

18 REPORTED BY: Lauren A. Balogh, RPR
19 (Via videoconference)

20 -----

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1 APPEARANCES OF COUNSEL:

2 ATTORNEY FOR PLAINTIFF

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(Via videoconference)

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(Via videoconference)

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12 (INDEX AT REAR OF TRANSCRIPT)

1 BRIAN GAMBRELL

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. MASCIALE:

5 Q. Good morning, Mr. Gambrell. My name is
6 Michael Masciale and I represent the defendant in
7 this case, Black, Slaughter & Black, PA. I know
8 we've corresponded a little bit over e-mail before,
9 but I don't think I've ever met you in person, so
10 it's good to put a face to the name.

11 A. Yep.

12 Q. Now obviously I understand that you're
13 an attorney and I'm sure you've taken several
14 depositions before, and you may have even given
15 deposition testimony, but just to go over the
16 ground rules, which I know you're familiar with,
17 but this is kind to refresh everybody's memory.

18 Obviously if you have any questions or
19 need me to clarify anything about what I'm going to
20 ask you, please direct your question to me and I'll
21 do my best to clarify any of my questions. And
22 since this deposition is being done over Zoom -- I
23 don't know if you've had any before. I think
24 probably everybody is somewhat familiar with them
25 by now with COVID. It might be a little more

1 difficult for the court reporter to take down
2 everything we're saying, so just please be sure to
3 refrain from talking over me while I'm asking my
4 full question and I'll certainly do the same as
5 you're answering.

6 Honestly, if you need a break at any
7 time, please feel free to let me know. I don't
8 think this is going to take too long, but, again,
9 let me know if you need a break. I'm happy to
10 accommodate you. And obviously if you discuss your
11 testimony or this case with anyone, even counsel,
12 other than to decide whether or not to assert a
13 privilege, I can ask you about the substance of
14 your conversation when we get back on the record.
15 That's fair enough?

16 A. Fair. And I'm purposely not -- I'm
17 looking down because watching someone talk is
18 disconcerting. I normally turn -- like I normally
19 cover the camera to where I'm not watching when we
20 do Zoom or Webex meetings because it's just weird
21 to me.

22 Q. I agree. It is kind of hard looking at
23 yourself on a screen and looking at other people.

24 A. Well, and, too, there's a slight delay
25 on the movement. Like I nearly threw up the first

1 time I watched my kids play Minecraft, and so it's
2 a little disconcerting.

3 Q. Fair enough.

4 MR. RADEKER: Mike, while we're at the
5 beginning, before we get started, the federal rules
6 about objections during depositions are even less
7 clear than the state rules about what's reserved
8 for trial. So what I would like to do, if it's
9 okay with you, do this here, is just put on the
10 record that we're reserving all objections until
11 the time of trial. That way I don't need to pop up
12 and say anything other than if there is like a
13 privilege instruction not to answer or something
14 like that, so I just let you do your thing, so...

15 MR. MASCIALE: Okay.

16 MR. RADEKER: All right.

17 MR. MASCIALE: That's fine with me.

18 BY MR. MASCIALE:

19 Q. All right. Well, if you could please
20 state your full name for the record.

21 A. It's Brian Carroll, with two Rs and two
22 Ls, Gambrell.

23 Q. And what is your current address?

24 A. My home address is 410 Finwood Court,
25 Columbia, South Carolina 29212.

1 Q. And how do you spell -- I'm sorry. Was
2 it Finwood, Fenwood?

3 A. Yes, Finwood. Fin like the fin of a
4 fish. Wood like wood of a tree. I don't know why,
5 but when they made that cul-de-sac they called it
6 Finwood.

7 Q. All right.

8 A. Never heard of it.

9 Q. And how long have you lived there?

10 A. I'm doing the math in my head.
11 16 years, 15 years. That was my oldest kid. My
12 youngest kid, he's 15. So 15 and a half years now.
13 Because we moved in in January and he was born in
14 July.

15 Q. Okay. And where were you before that?

16 A. We rented a house off of North Royal
17 Tower Drive in Irmo. We were there for four years,
18 I think.

19 Q. And I'm sorry, where was that?

20 A. North Royal Tower Drive in Irmo. It's
21 the main road that goes through both old and new
22 Friarsgate.

23 Q. Okay. And are you from the Columbia
24 area originally?

25 A. No.

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1 Q. Okay. And where are you from?

2 A. I was born in Anderson, but I grew up
3 in southern Greenville County, and lived there my
4 whole life until I went to USC.

5 Q. Okay.

6 A. And then --

7 Q. Oh, I'm sorry. Go ahead.

8 A. And then I moved to Columbia.

9 Q. And what's your date of birth?

10 A. It's May 7th, 1973.

11 Q. Okay. And I think you said you had at
12 least one child. How many children do you have?

13 A. I have two that I'm aware of.

14 Q. I think you said one is 15?

15 A. Yes. My oldest son is 21.

16 Q. Okay. 21. And what's his name?

17 A. His name is Balin, B-A-L-I-N.

18 Q. Bailey Gambrell?

19 A. Balin, B-A-L --

20 Q. Oh, I'm sorry.

21 A. Right. The dwarf from the Hobbit or
22 one of the knights from King Arthur, which is where
23 I got it and where Tolkien got it.

24 Q. And does he live in Columbia or in the
25 Columbia area as well?

1 A. He does, but not with us.

2 Q. Okay. And are you married?

3 A. I am.

4 Q. And what's your wife's name?

5 A. Amy with a Y.

6 Q. So is it A-M-Y or --

7 A. Yeah, A-M-Y.

8 Q. And how old is she?

9 A. 45.

10 Q. What does she do?

11 A. She's a school teacher. She teaches
12 middle school at White Knoll Middle.

13 Q. Awesome. My mom was a teacher. She
14 just recently retired, so that's great.

15 Any grandchildren yet?

16 A. None that I'm aware.

17 Q. Okay. And just for the purposes of
18 jury selection, if this case were to go to trial,
19 and bear with me because this is kind of a big list
20 of how the federal jury box kind of works. Do you
21 have any relatives in York, Chester, Lancaster or
22 Fairfield counties?

23 A. I do not. My wife would.

24 Q. Okay. Do you know about how many or --
25 actually what's your wife's maiden name?

1 A. Catoe.

2 Q. Can you spell that for --

3 A. C-A-T-O-E. And if you know anything
4 about Lancaster you can't swing a dead cat without
5 hitting a Catoe in life.

6 Q. Okay.

7 A. So we would be here literally all day
8 with me telling you about her various relations.
9 Understand that if you see the word "Catoe" there's
10 a substantial chance she's related to them.

11 Q. Okay.

12 A. I mean, she had -- she's got like --
13 she had three uncles, two of which have passed.
14 Each of her uncles has three to four kids. Plus
15 they had I think 20 first cousins. That's the
16 extent of how I know she's related to everybody in
17 Lancaster.

18 Q. Okay. What about any -- for either you
19 or your wife, in Kershaw, Lee, Richland, Sumter or
20 Calhoun Counties?

21 A. No, none other than -- now our son
22 Balin lives in Richland County, but he's registered
23 to vote in Lexington County. He lives in one of
24 the college apartments by the football stadium, but
25 his permanent address is still our house. So he

1 votes and gets his government mail at our house.

2 Q. Okay. Let's see. Lexington. What
3 about Orangeburg, Aiken, Barnwell, Allendale or
4 Bamberg Counties?

5 A. No.

6 Q. Okay. And where did you -- I think you
7 said you attended college at USC; is that correct?

8 A. That's correct.

9 Q. And when did you graduate?

10 A. I graduated with an undergraduate
11 degree in 1995 and I graduated with a law degree in
12 2000.

13 Q. And what was your undergraduate degree
14 in?

15 A. The most useless degree imaginable.
16 Political science.

17 Q. Well, that was one of my degrees, too,
18 so I agree with you.

19 A. Look where it got you.

20 Q. Yeah, exactly. It's law school or
21 public service or pretty much nothing else.

22 A. You're not even qualified to hold a
23 shovel.

24 Q. That is painfully kind of true.

25 So which bars are you admitted to

1 practice before and then when were you admitted?

2 A. South Carolina is the only state bar
3 and I was admitted in November -- I'm looking at my
4 license. Hang on. I don't even remember what
5 date. It's November of 2000, the 13th of November.
6 And I'm also admitted to practice before the U.S.
7 District Court of South Carolina and the Fourth
8 Circuit Court of Appeals. The U.S. District Court
9 I was admitted I think February or March of 2001
10 and the Fourth Circuit was 2009.

11 Q. Now, have you ever given deposition
12 testimony before?

13 A. One time before when I was in law
14 school.

15 Q. In law school?

16 A. That's correct.

17 Q. Okay. And what did that case involve?

18 A. I was the person in charge of reviewing
19 discovery documents produced by -- I believe it was
20 IndyMac Bank or one of the big banks, I can't
21 remember, on a class action lawsuit involving the
22 attorney preference form in real estate closings.
23 At one point in time you could sue in class for
24 violations of the Unfair Trades Practices Act.
25 That statute, after that series of suits was filed,

1 was amended to prevent that. So this suit was kind
2 of grandfathered in.

3 Two lawyers out of Aiken hired me to go
4 through the discovery documents that were produced
5 at the office of what is today I think Bobby Stepp
6 and Betsy Gray. I forget, is it still Gray and
7 Lafitte? But at the time it was called something
8 else. But it was -- Bobby Stepp was the lawyer for
9 the defense. The documents were produced at his
10 office, so even though I worked for attorneys in
11 Aiken I actually worked physically at Bobby's
12 office. And so after I finished my review I
13 produced a summary report and then Bobby deposed me
14 on that report. So I think it was in 1998. It
15 could be 1999. I'm not -- I'm not entirely sure
16 which summary that was.

17 Q. Okay. And do you recall the case title
18 or caption or which county it was filed in?

19 A. Not a clue. I remember we had a
20 hearing one time in Orangeburg County, so it might
21 be Orange -- it might have been filed in
22 Orangeburg. It was a class case, so I think it was
23 designated complex and assigned to Judge Williams.
24 So I don't think the county really mattered, but
25 the title, the name of the case, I have absolutely

1 no idea. That was more than 20 years ago.

2 Q. That's the only deposition you've ever
3 given?

4 A. Correct. I've taken hundreds, but...

5 Q. Okay. And who is your current
6 employer?

7 A. South Carolina Department of
8 Transportation. SCDOT is what we call it.

9 Q. Okay. And in what capacity are you
10 employed with SCDOT?

11 A. I'm assistant chief counsel. I'm one
12 of three -- four --

13 Q. Okay.

14 A. -- assistants.

15 Q. And how long have you been in that
16 position?

17 A. Since February. My first day was the
18 day Rush Limbaugh died.

19 Q. Hmm.

20 A. So February -- I don't remember the
21 exact date. I just -- I was getting my badge made
22 when the news broke. So the 15th, I think, or
23 16th.

24 Q. And so generally what does the position
25 of assistant chief counsel entail?

1 A. Basically whatever the chief counsel
2 tells me to do, but my role typically is to deal
3 with construction contracts and
4 construction-related issues. Within the department
5 I'm mostly -- that's -- who I interface with is the
6 construction office and that involves all phases
7 including procurement through delivery. Also I
8 have some responsibility for maintenance contracts,
9 but not very many. Probably 95 percent of my time
10 involves dealing with construction-related issues.

11 Q. Okay. And any litigation role in that
12 capacity?

13 A. Absolutely zero, which is the reason I
14 made the move.

15 Q. I thought you might say something like
16 that. I understand that.

17 A. Best decision I ever made in my life.
18 Outside of me marrying my wife.

19 Q. By whom were you employed prior to
20 SCDOT?

21 A. The Law Firm of Jason E. Taylor.

22 Q. Okay. And how long were you employed
23 there?

24 A. More than five years.

25 Q. And what was your role there?

1 A. I was an associate attorney and I was
2 the lead attorney in Columbia, South Carolina. In
3 fact, for a long period of time I was the only
4 lawyer actually physically based in South Carolina.

5 Q. And what kinds of cases did you handle
6 while you were there?

7 A. I was a plaintiff's lawyer, so
8 plaintiff's cases. Car wrecks, motorcycle wrecks.
9 I was one of the counsel on the SCANA Dominion
10 case. I handled -- I sued a lot of HOAs because
11 they're all breaking the law. I'm trying to think
12 what else. Medical malpractice.

13 Q. Okay. And on the --

14 A. Oh, I forgot. I also made fun of Drew
15 quite a lot. That's part of my job, to make fun of
16 Drew.

17 MR. RADEKER: Correct, that's true.

18 THE WITNESS: I'm good at it, too, but
19 there's ample material I get away with. What's
20 funny is I now work with Drew's wife, Adriane.
21 Adriane is -- works for the deputy director of
22 finance and her office is next door to mine.

23 BY MR. MASCIALE:

24 Q. Oh, man.

25 A. So I see Adriane every day. Keep the

1 good Radeker. She's the smart one.

2 MR. RADEKER: That's also correct.

3 MR. MASCIALE: Oh, boy. Drew, you
4 better watch out. I'm sure she's getting an ear
5 full about --

6 THE WITNESS: Oh, no, trust me, it's
7 the other way around.

8 MR. RADEKER: Yeah, I didn't want this
9 to happen.

10 THE WITNESS: I may have recently
11 mentioned that a good criminal defense attorney is
12 generally cheaper than a divorce attorney.

13 MR. MASCIALE: Oh, my gosh.

14 THE WITNESS: And you might end up with
15 less time.

16 MR. RADEKER: I'm working hard to keep
17 Lady Radeker happy in life.

18 THE WITNESS: She is quite the
19 formidable person.

20 BY MR. MASCIALE:

21 Q. Okay. So now in regard to the HOA
22 litigation you mentioned, do you know about how
23 many cases you filed against HOAs?

24 A. Not really.

25 Q. You say it's -- go ahead.

1 A. Well, no. It would have been more than
2 ten, but I wouldn't have a good number. I mean, I
3 don't have access to that information anymore so
4 it's not like I can readily come up with a number.

5 Q. Any class actions, anything like that?

6 A. Yeah, we tried that -- I tried that
7 route once and Judge Gergel basically said get a
8 ruling out of the Supreme Court and Court of
9 Appeals saying you can't do a foreclosure and then
10 we'll talk about it again. And we got that ruling
11 2019, so -- but I decided to not refile and then I
12 made this move, so...

13 Q. And while you were there at the Law
14 Firm of Jason E. Taylor any -- specifically, other
15 than this case, had you filed any Fair Debt
16 Collection Practices Act claims other -- in a
17 counterclaim or just an actual complaint before?

18 A. Not that I can remember, no.

19 Q. Okay. What about Unfair Trade Practice
20 claims?

21 A. Just about every counterclaim involving
22 HOAs involved the Unfair Trade Practices Claim Act.
23 Because the two -- FDCPA and the Unfair Trade
24 Practices Act do typically work together. They're
25 complementary legislation. But until this

1 particular case everybody generally stays within
2 the white lines on the road. They might not be in
3 the right lane, but they're at least between the
4 white lines.

5 Q. All right. Prior to Jason E. Taylor
6 were you with any other firms?

7 A. Before I joined Jason I worked for a
8 defense firm out of Ohio named Janik. They had a
9 Columbia office for about a year then decided to
10 beef up their Hilton Head office partly because the
11 partners of the firm all have condos in Hilton
12 Head, so they opened a Hilton Head office as a way
13 to travel to their condo as a tax write off.

14 And then before that I was with a firm
15 out of Atlanta named Helmes & Greene. Helmes &
16 Greene is a defense firm, but that -- I think I
17 joined them in May and then while I was in a
18 deposition in Dallas the firm imploded. So I had
19 to find a job relatively fast, so I went with
20 Janik. So I was probably with Helmes & Greene
21 maybe two, three months.

22 Q. Okay. And how do you spell the Ohio
23 defense firm?

24 A. J-A-N-I-K, I believe. Their main
25 office is in Cleveland.

1 Q. Okay. And you said you were there for
2 about a year?

3 A. It was a year -- yeah, it was exactly a
4 year.

5 Q. Okay. And prior to Helmes & Greene
6 were there any other firms you were associated
7 with?

8 A. Yeah, I worked for -- now this is going
9 to be kind of complicated, but the firm I was with
10 before joining Helmes & Greene was called Hamilton
11 & Associates. That was the descendant firm from
12 the second law firm I ever worked for which was
13 Ratchford & Hamilton. Mr. Ratchford retired and it
14 became Hamilton & Associates. I left Hamilton &
15 Associates and came back. And I worked in that
16 intervening time with, Roger, Townsend & Thomas.
17 And then for a very brief period of time with
18 McCabe, Trotter & Beverly. So I worked for
19 Mr. Hamilton for more than ten years and then for
20 maybe a year and a half after my defense firm.

21 Q. Okay. And when you were with Rogers
22 Townsend, about how long were you there?

23 A. It was a year and a half.

24 Q. And what did you do there?

25 A. I did exclusively homeowners'

1 association law and particularly homeowners'
2 association law collections. That sum of what I
3 did involved answering legal questions that were
4 posed by the HOAs, like, for example,
5 interpretations of their covenants, whether they
6 could fine someone, whether they could enforce
7 specific restrictive covenants as far as
8 appearance.

9 I filed enforcement actions on some of
10 that, like, for example, the neighbor -- like we
11 had one case in Spartanburg where a woman took a
12 1500 square foot house and build a 1500 square foot
13 addition and never received architectural review
14 board approval. And so it worked out the HOA all
15 the time was telling her to stop and she wouldn't,
16 so finally we had to sue. So that was the kind of
17 -- and then I would also handle contested HOA
18 foreclosure cases if an attorney appeared. I would
19 litigate those. And sometimes, very rarely, but
20 sometimes I would go and appear in court for the
21 other -- one of the other lawyers if there was a
22 schedule conflict on the uncontested roster.

23 Q. So both contested and uncontested HOA
24 foreclosures, but mostly contested?

25 A. Yes. Probably 95 percent of what I did

1 was contested and probably -- I think maybe once a
2 quarter I had to go -- because I think Berkeley and
3 another county had their uncontested hearings the
4 same day. I can't remember. I remember having to
5 go to Moncks Corner at least three times.

6 Q. Okay. And I don't think this is true,
7 but was Judge Van Slambrook master-in-equity then?

8 A. No clue. I have no recollection.

9 Q. Okay. Now I know you said you were
10 briefly with McCabe Trotter. How briefly were you
11 there?

12 A. Our last day with Rogers Townsend was
13 like sometime mid August and I resigned Labor Day
14 weekend, so three weeks.

15 Q. And why did you leave?

16 A. Mainly because I was thrown under the
17 bus for something I didn't do. And in particular,
18 we were working on a brief together, and it wasn't
19 my case. I had nothing to do with the case. Never
20 litigated the case. And I wrote a brief and handed
21 it to Ryan for him to proof and add, and basically
22 he filed it without having added it, without having
23 reviewed it, and we missed a significant issue,
24 which I of course would have had no knowledge of
25 because I didn't litigate the case. And instead of

1 taking ownership for his mistake he decided to
2 blame me, and I realized that that was not going to
3 be fruitful for continued partnership. It wasn't
4 our mistake. It was my mistake. I should have
5 known things that I didn't know. So I left.

6 Q. Okay. And when you say Ryan are you
7 referring to Ryan McCabe?

8 A. That's correct.

9 Q. Okay. Do you recall the case that was
10 on?

11 A. I remember it involved an HOA in
12 Greenville. I mean, it was an HOA in Greenville.
13 I don't remember the name of the HOA or the case
14 name. I think the case ultimately resolved while
15 on appeal. I don't think there's a recorded
16 decision on it. My recollection was that the
17 position that the HOA had taken was out on a limb,
18 so the appeal really had no chance anyway.

19 Q. And what position was that?

20 A. I don't -- I mean, I think it involved
21 sound restrictions or -- now that I'm remembering
22 it, it involved a church that had been -- part of
23 the church had been converted into condos, but the
24 sanctuary had not, and then they leased the
25 sanctuary to a new church that was in that like New

1 Spring Elevation. They play lots of loud music,
2 light shows, and it was disturbing the neighbors.
3 But there was a specific provision in the covenants
4 that allowed the church to lease the sanctuary for
5 worship purposes.

6 I'm sorry. I got an e-mail from the --
7 we have an issue going on, so I had to say, no,
8 don't bother me now.

9 But that's all I remember of the case.
10 I don't remember the name of the HOA or the -- but
11 if I recall, that that was the -- that was
12 essentially the reason why we would never prevail,
13 is that the covenants, if I recall right, didn't
14 define worship, what a worship was, and so -- and
15 actually worship would make noise, and so because
16 the covenants specifically said that they had the
17 right to do it, I didn't see where the homeowners'
18 association had much of a right to challenge it.
19 If you move next to a church you should expect
20 church on Sunday mornings.

21 Q. Okay. And do you recall about when
22 that case was decided at the -- well, first at the
23 trial level?

24 A. No. I mean, I was with Rogers Townsend
25 from December 2010 until August of 2012, so

1 sometime in that window. No idea otherwise.

2 Q. Okay. All right. And I think we've
3 covered already -- well, were there any other firms
4 or is that it?

5 A. That's it, I think.

6 Q. Okay. Now, in preparing for this
7 deposition today -- well, actually hang on. Let me
8 back up. I think you said you have represented
9 parties in the past in FDCPA actions; is that
10 correct, or just one?

11 A. This is it. This is the first action
12 that I remember filing as a plaintiff. I was
13 involved, in fact, kind of became, our team at
14 Rogers Townsend, the FDCPA compliance person. In
15 other words, I'm the one that kind of looked over
16 all of our stuff. I kept up with any changes to
17 the FDCPA. An important FDCPA change happened
18 sometime in that time in which the Supreme Court
19 decided a major FDCPA case, and so we had to modify
20 our rules, modify our warnings and things that we
21 were sending out. So to the extent -- I mean, I
22 wasn't filing FDCPA cases, but I was on the other
23 side of ensuring compliance.

24 Q. Okay.

25 A. And making sure that we had -- not only

1 that we had a bona fide procedure to avoid it, but
2 that we were actually following it. So that was
3 kind of going hand in hand.

4 Q. Okay. Now in preparing for your
5 deposition today, did you discuss this case or your
6 testimony with anyone?

7 A. I talked to Drew yesterday briefly to
8 find out what the status of the case was.
9 Obviously I haven't looked at it or dealt with it
10 since I've been here. And I did go on PACER and
11 redownload the complaint and the exhibits just to
12 refresh my recollection of the exact wording of
13 specific documents. And I looked at the Rules of
14 Professional Conduct and the Rules of Civil
15 Procedure. And I made fun of Drew. But that
16 should be assumed by now.

17 Q. Okay. So you spoke with Drew
18 yesterday?

19 A. Yes. We groused about baseball and how
20 dare the Braves blow their chance to win it all.

21 Q. Yeah. And as it pertains to this case,
22 when you say you discussed the status of the case,
23 what do you mean by that?

24 A. Is it civil litigation. What the
25 outcome of the motion hearing was. I mean, what

1 the motion I think you filed was, and that was
2 about it. I mean, where -- I'm being deposed, is
3 there more to -- is discovery ongoing, that was
4 essentially -- where we were on the litigation
5 timeline.

6 Q. Okay. And --

7 A. If Judge Wooten still had the case.

8 Q. Okay. So what is your understanding of
9 the case's posture right now?

10 A. Motion was denied. We moved on to
11 discovery.

12 Q. Okay. And that's it?

13 A. That's it.

14 Q. Okay.

15 A. I think I asked how Stacey was doing
16 just as a general concern.

17 Q. Did you discuss -- and just for
18 clarity's sake, I will refer to the underlying
19 case, the Cole Creek Homeowners' Association, Inc.
20 Versus Stacey D. Poole, Case No. 2018-CP-46-03714
21 in the York County, South Carolina Court of Common
22 Pleas. I'll refer to that as the "HOA foreclosure
23 action" going forward.

24 Did you discuss the HOA foreclosure
25 action at all with Drew?

1 A. Not -- not yesterday, but I have --
2 some months ago I think Drew asked me in a
3 telephone call if I remembered the name of the
4 court reporter who was there for one of the
5 hearings, and I did not, so at that point he told
6 me that the motion for summary judgment had been
7 granted and that case is now on appeal. I think
8 that's the extent of what I know about that case.

9 Q. Okay. And you aren't aware of the
10 disposition of that appeal?

11 A. No.

12 Q. Okay.

13 A. Or if there even is an appeal, to be
14 honest.

15 Q. Well, I'll just -- I don't think it's
16 worth going into the appeal too much, but I'll just
17 submit that I think when I checked it on C-Track it
18 had been dismissed, but anyway. Let's see.

19 So other than everything you had told
20 me that you have -- have you done anything else to
21 prepare for the deposition?

22 A. I refreshed my recollection on the
23 FDCPA, in particular the exact provisions of
24 Section 1692 subparts -- well, little c, subpart
25 two. And then also the -- I looked at the case

1 that I actually was referring to, which was Jerman
2 versus Carlisle, which was the big FDCPA case that
3 came out while I was at Rogers Townsend. It's
4 559 U.S. 573 and it's a 2010.

5 Q. And just briefly, if you can summarize
6 the Court's holding in that case.

7 A. Very broadly it talks about the
8 relevant procedures to avoid -- the bona fide
9 procedures even includes mistakes of law. So
10 essentially it's just supposed to have a procedure
11 not only to prevent sending out notices to people
12 you shouldn't send out, but also to batch stop your
13 interpretation of the FDCPA.

14 Q. And that's it?

15 A. Yeah, that's all I remember.

16 Q. Okay. And you didn't review anything
17 else in preparation for the deposition?

18 A. That's it. The initial pleading and
19 the e-mail exchanges that I filed.

20 Q. Okay. Now, we -- or my office
21 previously served a subpoena on you for today's
22 deposition; is that correct?

23 A. That's correct.

24 Q. And the subpoena also required you to
25 produce certain documents relating to this matter;

1 is that correct?

2 A. That's correct.

3 Q. Okay. And I believe you recently
4 responded that you had no documents responsive to
5 the subpoena. And just for a reference, the
6 subpoena request said any and all non-privileged
7 correspondence, letters, e-mails, and I'm
8 paraphrasing, but any other documents related to
9 the matters forming the basis of this action. And
10 I believe you recently responded you did not have
11 any responsive documents; is that correct?

12 A. That's correct. I do -- now after
13 sending that e-mail I did download from PACER the
14 pleadings in those e-mails, so I can produce those
15 to you, but I think you already have them.

16 Q. That's fine.

17 A. I can produce to you the Rules of Civil
18 Procedure and the Rules of Professional Conduct, if
19 you would like that as well.

20 Q. I think I've got enough copies already.

21 A. Okay.

22 Q. But I appreciate it.

23 A. Essentially that's all I have. I did
24 not take with me or keep any client-related
25 material since I was going into government. I

1 would no longer have civil clients, so there was no
2 need to take that stuff with me.

3 Q. Okay. So you're not -- just to -- I
4 just want to be clear. So you're not withholding
5 any subpoena documents or information under a claim
6 of privilege; you simply just don't have anything?

7 A. That's correct, I do not have anything.

8 Q. Okay. So would your former firm have
9 those documents?

10 A. They would, but my recollection of the
11 file we gave, I think we gave it all to Drew. We
12 gave Drew a complete copy of that file since he
13 took over the representation. And, if I recall,
14 the only documents that were in that file would be
15 privileged information such as my contemporaneous
16 notes, my research, which I would fully expect Drew
17 to already have designated as attorney-client
18 material.

19 Q. Okay.

20 A. And my communications back and forth
21 with Stacey which would obviously also be
22 privileged.

23 Q. Any other specific types of documents
24 you can recall?

25 A. I think I have a copy of the covenants.

1 I had a copy of the pleadings filed by Black,
2 Slaughter & Black, the discovery documents that
3 would have been in that folder, both what I was
4 served and what I served.

5 Q. Okay. Now, I would like to turn to the
6 HOA foreclosure action. And you represented
7 Ms. Poole in the HOA foreclosure action for a
8 certain period of time; is that correct?

9 A. That's correct.

10 Q. And when were you retained to represent
11 her?

12 A. When?

13 Q. Yes.

14 A. No idea. It would have been shortly
15 after she was served the complaint. So as far as a
16 timing issue, around about there.

17 Q. Okay. Do you know about when that
18 would have been?

19 A. No.

20 Q. Was that in -- okay.

21 A. I mean, I assume you have access to the
22 summons, so it would be within the period of time
23 that the summons would have allowed an answer
24 because we timely filed an answer and counterclaim.
25 But I think we initially filed a motion to dismiss,

1 but I don't -- I actually did not go back and look
2 at that file or any pleadings in that file for
3 today.

4 Q. Okay. Let me see. I'll try and share
5 my screen and not mess this up, so bear with me one
6 second.

7 A. Are you trying to pull up the summons?

8 Q. I am, yeah. I think I should be able
9 to get it. I'm even a little out of practice with
10 Webex depositions, so bear with me one second.

11 A. I pulled it up on the SC Court's
12 website. It looked like --

13 Q. I've got it up and share my screen.

14 All right. Can everyone see that?

15 A. Right. I looked -- I pulled up the
16 answer --

17 Q. Okay.

18 A. -- that I filed and the answer was
19 filed on December 27th of 2018.

20 Q. Okay. And we'll --

21 A. It would have been around about -- and
22 it looked like they served it or filed it on
23 December 7th, so it would have been between -- it
24 would have been that two weeks between when they
25 filed and summons and complaint lis pendens and

1 when I answered it.

2 Q. Okay. And we're going to mark -- or
3 this will be marked Defendant's 1. This is the
4 summons and complaint for the HOA foreclosure
5 action filed December 7th, 2018.

6 (GAMBRELL EXHIBIT 1, summons and
7 complaint for judgement of foreclosure, enforcement
8 of equitable lien, and enforcement of declaration,
9 was marked for identification.)

10 BY MR. MASCIALE:

11 Q. You received a copy of this document;
12 is that correct?

13 A. That's correct, yes.

14 Q. Okay. And how did you receive it, if
15 you can recall?

16 A. I think Stacey gave me the case number
17 and I went and downloaded it myself using the SC
18 Court's e-filing system.

19 Q. Now at that time were you an authorized
20 electronic filer on the e-filing system?

21 A. Yes, I was authorized from day one.

22 Q. Okay. And you received electronic
23 filing notifications through that system for your
24 cases?

25 A. After I made an appearance, yes.

1 Q. Okay.

2 A. But I mean -- but there's a way you can
3 go look at the pleadings without having to --

4 Q. Right.

5 A. Records aside.

6 Q. Right. Now this will be marked
7 Defendant's 2.

8 (GAMBRELL EXHIBIT 2, answer and
9 counterclaim, was marked for identification.)

10 BY MR. MASCIALE:

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. And is this the answer and counterclaim
14 that you filed on behalf of Ms. Poole?

15 A. It looks like it.

16 Q. Okay. And does that appear to be your
17 electronic signature that appears at the bottom of
18 page four there?

19 A. It is.

20 Q. Okay. Now, turning to -- and really
21 the only thing I want to go over with you about
22 this is paragraph seven here. Do you see that?

23 A. Yeah.

24 Q. And that's a denial of paragraphs 8
25 through 16 of the complaint, Exhibit 1?

1 A. That's correct.

2 Q. Okay. Now I'm going to go back to
3 Exhibit 1. So if you just want to take a second
4 and review these allegations and just make sure
5 that that's your answers and accurately -- or
6 that's a of denial of those allegations?

7 A. The denial is accurate.

8 Q. Okay. And that includes paragraph nine
9 here where the HOA alleged Ms. Poole owes about
10 \$7,005.00 in assessments, principal, late fees,
11 interest, costs of collection?

12 A. That's what the HOA alleged.

13 Q. Okay. And that was denied, correct?

14 A. It was denied, correct.

15 Q. Okay. Now, in response to the
16 complaint that was filed, did you do anything else
17 or file anything else in the HOA foreclosure case?

18 A. I'm sure I did. I think I filed a memo
19 in response to a motion for summary judgment. I
20 think we had a hearing on a notice to amend -- I
21 mean, a notice of a motion to dismiss before Judge
22 Kimball. And I filed a motion for sanctions
23 arising out of the incident that gave rise to this
24 complaint. So there was several -- I mean, if the
25 -- there were things filed and served in that case.

1 Q. And I'll get to the motion for
2 sanctions in a bit.

3 Now, let's see. I think we've already
4 answered this, but just to clarify, in the answer
5 and counterclaim that you filed, Ms. Poole denied
6 liability for any unpaid assessments; is that
7 correct?

8 A. That's correct.

9 Q. And she asserted a counterclaim for an
10 alleged breach of HOA covenants for failure to
11 maintain the common elements; is that also correct?

12 A. That's correct.

13 Q. Okay. Now, with regard to the case
14 you're here for today and the HOA foreclosure
15 action, while you were involved in both, how was
16 your -- did you maintain a single file or did you
17 maintain two separate files for each case?

18 A. It would have been a single file.

19 Q. A single file.

20 A. Just different folders.

21 Q. Okay.

22 A. We -- my -- the firm Jason E. Taylor
23 tried to be as paperless as possible. And since we
24 had offices kind of regionally in Hickory,
25 Charlotte, Columbia, and Rock Hill it didn't make

1 sense to have a physical folder in four different
2 places, so typically it would be an electronic
3 file. The only physical file that we would have
4 had would have involved documents that were served
5 on us or that we had to print out and then we would
6 have put those documents in a file.

7 Q. Okay. Now, in regard to those files,
8 how did you track your time on those?

9 A. I mean, at the time that was what I was
10 using. I graduated to an iPad, but as far as
11 specific amounts of time that I would have spent it
12 would have involved for -- not necessarily for the
13 HOA case, but like, for example, the FD CPA case
14 would have involved time entries that I would have
15 handwritten.

16 Q. I've got you.

17 A. And then ultimately with the goal or
18 the idea of transposing those into a written format
19 in the form of an attorney's fee affidavit that
20 would have been submitted.

21 Q. And the HOA case did not involve time
22 entries?

23 A. I did not typically make time entries
24 in those.

25 Q. Okay.

1 A. Given the posture of those cases.

2 Q. Okay. Is that case on a -- is that on
3 an hourly rate or is that a contingency fee?

4 A. It was a contingency fee. Like I said,
5 the posture of it involved -- since it involved
6 kind of the same legal theory over multiple cases
7 it was really difficult to assign a time value to a
8 particular file, so I was going to deal with it, if
9 we got there, with trying to figure out some
10 proportion under some sort of lodestar analysis.

11 Q. And now was the FDCPA case -- I know
12 you kind of tracked your time for that. Was that
13 also part of the contingency fee or was that
14 hourly?

15 A. That was a contingency fee.

16 Q. Okay. And you said you tracked your
17 time with handwritten notes. Were those ever
18 converted to electronic records?

19 A. No. I spent only like an hour or three
20 responding to the memo, responding to the motion
21 that was filed, so the timestamp was relatively de
22 minimus. And I had left not too long after that,
23 so...

24 Q. Okay. So who is in possession of those
25 handwritten notes capturing your time?

1 A. No one. Like I said, theoretically it
2 could be me, but I don't remember physically
3 writing ones down for this case because, like I
4 said, it -- I had such little time in it -- I mean,
5 we filed this one at the end of October. I had
6 already interviewed with SCDOT, knew I was leaving,
7 so I knew that we wouldn't have much time in it,
8 so, I mean, I responded to like one memo and that
9 was it.

10 Q. Okay. And do you know how bills were
11 generated to Ms. Poole?

12 A. No bills were generated to Ms. Poole.
13 It was a contingency case.

14 Q. Right. Any bills for costs or the cost
15 of filing a motion or filing the action?

16 A. They would have been generated in a
17 Word document at the end of the case in a
18 disbursement sheet which we would have reflected --
19 the amounts reflected discounted against the cost
20 and then she would have gotten that result. We --
21 as a plaintiff's firm we didn't have billing
22 software. We didn't routinely track time. In
23 fact, I think I was the only lawyer in the firm
24 that had causes of action where an attorney's time
25 was an element of potential damages. I think we

1 had a case in North Carolina like that and we just
2 -- the lawyers did timesheets, just physically
3 wrote it down and we typed it up when there was an
4 award of attorney's fees.

5 Q. And that was going to be my next
6 question, because I believe here Ms. Poole is
7 claiming or attempting to recover her attorney's
8 fees in this case. And so it's your testimony then
9 that there was never -- or there are no current
10 notes capturing your time for work billed on this
11 case?

12 A. That's correct. I could reconstruct it
13 based on e-mails that I've sent. I can -- I mean,
14 again, it would be -- because I spent very little
15 time on the case, I didn't know when we -- when you
16 filed the motion. So I mean, we're talking three,
17 four hours at the most I think I might have -- so
18 that would be easy to reconstruct.

19 Q. Okay. Now, after -- and I know you
20 said earlier that you had also filed a memorandum
21 in opposition to the HOA's motion for summary
22 judgment as well as a motion for sanctions in the
23 HOA foreclosure case. Did you do anything -- well,
24 first of all, when were you -- when did you
25 withdraw as Ms. Poole's counsel and Drew was

1 substituted in?

2 A. It would have been January, February
3 this year.

4 Q. Okay. February 11th, 2021 sound
5 correct?

6 A. Yeah, that's my brother's birthday, so,
7 yeah, that would have been -- I'm pretty sure that
8 would have been the date that it was filed. That
9 would have been right before -- I was supposed to
10 start at SCDOT on February the 1st, but my wife
11 ended up with COVID and I tested positive, so I
12 ended up getting a COVID-related two weeks off. So
13 during that period of time I was at home with
14 nothing to do, so I was helping with file transfers
15 and things that -- facilitating that while I was
16 waiting to start here.

17 Q. And up until -- so from December -- let
18 me make sure I get this right. December 27, 2018,
19 when you made an appearance and filed an answer and
20 counterclaim, through February 11, 2021, other than
21 filing the memorandum in response to a motion for
22 summary judgment as well as the motion for
23 sanctions, did you do anything else with regard to
24 the HOA foreclosure action?

25 A. Oh, no, we -- there was -- in the HOA

1 foreclosure action there were motion hearings,
2 drafting memos, responding. I mean, on the HOA
3 side of it there was -- I mean, it was litigated.
4 I can't say that it was vigorously litigated within
5 an inch of everyone's life, but certainly there was
6 a lot of stuff that went back and forth as far as
7 memos and cases and research and that sort of
8 thing.

9 Q. And -- go ahead.

10 A. Right. I mean, so -- and some of that
11 research would have preexisted the Stacey Poole
12 case. So to the extent that it has a time value,
13 again, that would have to be -- if you use the same
14 memo for five different cases is it fair to charge
15 full freight five times? I don't think so. So if
16 there would have been some sort of analysis, like a
17 lodestar analysis, I would have had to have done to
18 try and figure out how to assess that research
19 across the various files in which that research
20 applied.

21 Q. Okay. And in terms of actually any
22 filings with the HOA foreclosure case, did you file
23 anything else?

24 A. There was a memo in opposition which
25 were -- probably had been the most substantial or

1 substantive thing that we worked on. The motion
2 for sanctions was fairly short. We had a couple of
3 status conferences that we had to deal with. I
4 think all of them occurred either by -- I think
5 they all occurred by phone actually. I don't think
6 we physically had to go.

7 But what's funny is I'm looking at the
8 file, I distinctly remember having a hearing with
9 Judge Kimball in this case well before he retired
10 and then we had another hearing with the new master
11 that covered largely the same ground. And I think
12 I filed a motion to reconsider his denial of a
13 motion to dismiss, but I don't see that listed
14 here. But when cases get referred to the master
15 it's -- ECF creates like two different timelines or
16 two different files, and so I know we did it and I
17 know we were there because I know, for example, one
18 of the issues that Judge Kimball raised was
19 directly addressed by the Supreme Court in Winrose.
20 And so when we went back in front of the new master
21 I had a copy of Winrose. It said, see, see, here,
22 read this. So I know that that case -- there was a
23 discussion that occurred early in that case that
24 was -- that Winrose had a significant impact on.
25 In fact, I want to think I -- I remember addressing

1 that with the new master saying we shouldn't be
2 here at all anymore because the Supreme Court has
3 already said that this is not the relief of first
4 choice.

5 Essentially the argument that I was
6 advancing, which was what the HOA should have done,
7 which is filed an action at law for breach of
8 contract was -- the appropriate remedy that the HOA
9 should have sought was kind of -- well, not kind
10 of, it is supported by Winrose, that foreclosures
11 is a drastic remedy that should only be used as a
12 very, very, very last resort, not as a routine
13 business model which clearly Black, Slaughter &
14 Black I believe still uses as a business model.

15 So to the extent that there were things
16 that were filed and discussed in the case, I don't
17 know if the ECF accurately reflects everything that
18 went on, but that would be -- since I'm no longer
19 with that firm and no longer have access to the
20 file, the ECF is really the only timeline I have.
21 But I distinctly remember other things going on
22 that would have been filed and served and discussed
23 and litigated beyond just what's in there.

24 Q. And I don't want to cut you off, but --
25 I know I said if you needed to take a break, please

1 let me know, but I actually think I'm going to take
2 just a five-minute break to run to the restroom
3 real quick if that's all right with everybody.

4 THE WITNESS: That's fine.

5 MR. RADEKER: I was wondering when I
6 was going to pop up and suggest one.

7 (A recess transpired from 12:19 p.m.
8 until 12:31 p.m.)

9 BY MR. MASCIALE:

10 Q. To get back to where we left off, and
11 we had just discussed your filings in the HOA
12 foreclosure case. Now, I assume, and correct me if
13 I'm wrong, but you are aware at the time that the
14 plaintiff, the HOA, filed a motion for summary
15 judgment in that case; is that correct?

16 A. That's correct.

17 Q. And do you recall when that was filed?

18 A. It looks like November 26th, 2019.

19 Q. Okay. This will be -- let me share my
20 screen again. This will be Defendant's 3.

21 (GAMBRELL EXHIBIT 3, Plaintiff's motion
22 for summary judgement, was marked for
23 identification.)

24 Q. Okay. This will be Defendant's 3. And
25 this is the Plaintiff's motion for summary judgment

1 filed in that case. And you've seen this document
2 before?

3 A. Yes.

4 Q. Okay. And were you aware that the
5 motion was primarily based on Ms. Poole's failure
6 to timely respond to a set of requests for
7 admissions served on her?

8 A. I am aware.

9 Q. And were those requests for admissions
10 ever responded to?

11 A. I think we filed a -- it was part of
12 our hearing, an opportunity to serve responses
13 under -- I can't remember the name of the case.

14 Q. And I'll just submit to you the Court
15 ultimately denied that request and found that
16 Ms. Poole should have responded on time. And you
17 received those requests -- those requests to admit
18 were served on you, correct?

19 A. I believe so. I mean, I don't have any
20 -- I don't have access to the file or my notes or
21 anything like that, so I wouldn't remember.

22 Q. Okay. And in response to the
23 Plaintiff's motion for summary judgment, I know you
24 filed a memorandum in opposition, but did you do
25 anything else? Did you conduct any discovery,

1 serve any discovery, take any depositions, anything
2 like that?

3 A. I didn't take any depositions. I don't
4 remember about discovery.

5 Q. So what did you use to oppose the
6 motion for summary judgment?

7 A. The restrictive covenants.

8 Q. And that's it?

9 A. And discussions with Stacey.

10 Q. Discussions with -- what do you mean by
11 that?

12 A. I mean, I interviewed my client. She
13 had pictures.

14 Q. And I'm sorry. Just to clarify, I mean
15 in terms of evidence or facts submitted to the
16 Court.

17 A. Yeah, I mean, the covenants. We spent
18 a lot of time discussing the interpretation of the
19 covenants themselves, whether there was a common
20 element, whether the exterior of the building was
21 part of the common elements, the -- what the duty
22 of the HOA was vis-a-vis maintaining the common
23 elements and waterproofing. My recollection, the
24 HOA asserted that was an original building defect,
25 the failure to include waterproofing. But because

1 it's a condominium Ms. Poole didn't own anything
2 below the paint. Her property was paint to paint,
3 floor to ceiling. So if it's not her -- the water
4 had to have at least at some point passed through
5 the common elements on its way to her unit, so that
6 was -- that was part of the issue.

7 And because, in fact, she had spent
8 thousands of dollars I think we had some bills or
9 estimates that we responded with, now that I'm kind
10 of going back through my recollection, of the
11 monies that she spent would have theoretically
12 offset the assessments that she allegedly owed. If
13 I recall, they almost completely canceled each
14 other out. Because I know that she had water
15 intrusion damage I think on two or three separate
16 occasions, but my recollection is pretty fuzzy.

17 Q. And did you all ever discuss or was the
18 possibility ever raised trying to sue the developer
19 of that condominium?

20 MR. RADEKER: I'm going to instruct him
21 not to answer to the extent of what you're asking,
22 and this might not even be what you're asking. To
23 the extent of what you're asking is, like, did he
24 discuss that with his client, who is my client now,
25 then, no, that's privileged. I'm going to instruct

1 him not to answer that.

2 MR. MASCIALE: Right.

3 MR. RADEKER: Yeah, but you just said
4 like did you ever discuss. I would be like,
5 discuss with who?

6 BY MR. MASCIALE:

7 Q. I'll try and I'll rephrase it.

8 Did you ever -- did you -- was it ever
9 -- did you ever consider bringing an action against
10 the developer for the construction defect issues?

11 A. I mean, that would be my privileged
12 information, but I will say that, as a matter of
13 fact, the developer had declared bankruptcy and had
14 received bankruptcy protection. And so the
15 entities that had constructed the buildings had
16 long since -- not only were bankrupt, but had --
17 were nonexistent and would be under -- their
18 insurance information was unavailable. So to the
19 extent that the developer was a potential
20 defendant, but the way I looked at it, it's not the
21 homeowners' responsibility to sue the developer.
22 It would have been the HOA's responsibility to sue
23 the developer as soon as we filed our counterclaim
24 alleging that there was a water intrusion issue.
25 Because under South Carolina law the developer has

1 the duty to turn over common elements in good
2 repair.

3 So that cause of action actually didn't
4 belong to Stacey. It belonged to the HOA. To the
5 extent anyone should have sued the developer for
6 any sort of recovery it should have been the HOA.
7 And if they didn't do that, then that would be
8 perhaps a separate breach of fiduciary duty by the
9 HOA to its members including Stacey. So to the
10 extent that that doesn't -- I mean, I think I
11 looked into it, but to the extent that that's
12 really not her game to play.

13 Q. And that's -- and just so I make sure,
14 that's based on your interpretation of the
15 covenants that that particular waterproofing
16 membrane is included in the common elements of the
17 HOA?

18 A. That's correct. It would be included
19 within the exterior close which you would define --
20 which most covenants would define, I think
21 reasonable people would define, as the -- from the
22 exterior vinyl or brick or whatever it was all the
23 way up to the paint. Because under an HOA, under
24 condominium law, the owner of an unit doesn't own
25 anything below the paint, anything below the

1 drywall. That's all they own. They don't own
2 anything in the wall. That's all HOA common
3 element.

4 Q. And I know you referenced the covenants
5 with regard to the counterclaim that you filed.
6 Was there any evidence or facts that you used or
7 submitted to the Court to oppose Ms. Poole's
8 liability for unpaid assessments on the HOA's
9 claim?

10 A. I don't remember. I want to think that
11 she had a -- I know we did an affidavit in which
12 she swore to the amount she had spent on repairs
13 over the years, but I might be -- I don't remember.

14 Q. Okay.

15 A. I'm dimly remembering something like
16 that. I know we submitted pictures showing
17 evidence of the water intrusion. Like I said, I
18 know we sent or we showed -- we gave that in -- and
19 I think we discussed that, but I don't really
20 remember.

21 Q. Okay. And to the extent that the HOA
22 directly alleged that Ms. Poole was liable for
23 unpaid assessments, there was nothing submitted
24 directly to contradict that or to create a factual
25 issue regarding...

1 A. I don't remember. I know that what we
2 advocated was that it would be a setoff.

3 Essentially what she spent in repairs should be
4 used to set off the amount in the assessments.

5 Q. Okay. And I'm sure you're aware that
6 as we discussed the motion for summary judgment
7 that the plaintiff filed was based in relatively
8 large part on Ms. Poole's admissions and the
9 liability for the alleged debt. And I'll -- I'm
10 sorry. I'll share my screen again.

11 A. I'm aware that that's what the judge
12 decided, but --

13 Q. Okay.

14 A. -- I'm also aware that we have a Court
15 of Appeals and the Supreme Court. I mean, trial
16 judges don't always get it right.

17 Q. And --

18 A. And particularly I found that the trial
19 courts really don't understand the Horizontal
20 Property Regime Act, but I'm not even sure the
21 Court of Appeals does, to be honest.

22 Q. And just so -- just to clarify, you're
23 not involved in Ms. Poole's appeal, are you?

24 A. No.

25 Q. And you were only involved at the trial

1 level?

2 A. That's correct, up until the point that
3 I left early February.

4 Q. Okay. And so I think we discussed
5 this, but the plaintiff filed their motion for
6 summary judgment based in large part on Ms. Poole's
7 admissions on November 26, 2019; is that correct?

8 A. That's correct. That was the basis of
9 the motion. Whether it was a proper basis or what
10 the judge ultimately decided is -- I mean, I think
11 reasonable minds differ.

12 Q. And you received a copy of that motion
13 and you were aware that was the basis for their
14 motion; is that correct?

15 A. That's correct.

16 Q. At the time?

17 A. That's correct. But none of the
18 admissions actually undercut the fact that she had
19 spent the money and would be entitled to an offset
20 to the assessments. There was nothing about damage
21 or how much damages had been incurred or as far as
22 -- so to the extent that there were admissions it
23 did eliminate allegedly some issues, but not the
24 whole case. In fact, my understanding of the order
25 was kind of inconsistent. It essentially decided

1 two mutually exclusive things and there was no way
2 to kind of reconcile both halves of her ruling.

3 Q. And I'll share my screen again. If we
4 take a look at paragraph five in the subparagraphs,
5 this is a plaintiff's motion for summary judgment.
6 Looking at Subparagraph D, could you read that for
7 me.

8 A. Sure. It says "admit that the
9 association is not responsible for alleged water
10 intrusion on the Defendant's property."

11 Q. And I understand your position on that
12 issue, but as far as the admissions were concerned,
13 as far as the facts admitted, would you agree that
14 would -- if upheld, would kind of defeat your
15 breach of contract claim?

16 A. No, no, I wouldn't think so. And the
17 reason why is because it says the association is
18 not responsible for any alleged water intrusion.
19 The problem with that is the word "responsible."
20 What does the word "responsible" mean? Did it
21 cause it? Well, no. No one is alleging that the
22 association went out there with a garden hose or
23 fire hose and squirted the water on the wall.

24 What the problem was was after it
25 occurred and it damaged my client's unit, they had

1 a duty under -- they had a duty to the entire
2 association and to Ms. Poole in particular to go in
3 and correct that issue. And the failure to do that
4 is a breach. The fact that it's -- unless they had
5 gone out there and fixed it since, it's still going
6 to be a breach.

7 And so to the extent that -- and I
8 think you could go look back against B, you're
9 right, she had no recovery against the developer or
10 original builder because the original builder
11 doesn't exist anymore. So who is quote/unquote
12 responsible for maintaining the common elements?
13 The common elements responsibility indues to the
14 board. The board -- the HOA has that
15 responsibility to maintain the common elements and
16 their failure to do so is what caused the damage to
17 my client's unit. The fact that it was water -- it
18 was water this time. It could be any number of
19 things the next time. So what was responsible
20 wasn't necessarily the water intrusion. It was the
21 failure to maintain the common elements.

22 So none of these requests to admit ever
23 discussed whether they had a duty to maintain the
24 common elements, whether they did maintain the
25 common elements. It really referenced the fact

1 that the association is trying to blame the
2 developer for it, but -- and I think you've
3 scrolled up to number two. It's a duty to maintain
4 the common elements which is what caused the
5 damage. The water was simply the mechanism. I
6 think their argument kind of substitutes the cause
7 for -- the mechanism for the cause. If the
8 association common elements had been properly
9 maintained or repaired when she first tells them
10 about it, then that's the problem. They don't --
11 she has no duty to mitigate any of the water, for
12 example. I mean, it's not her -- she only owns
13 air. So...

14 Q. Okay. I'll -- this will obviously be
15 an exhibit, and I think it speaks for itself.

16 Now, to move on, did you -- were you
17 part of a status conference in the HOA foreclosure
18 action in January of 2020?

19 A. January of 2020?

20 Q. That's correct.

21 A. It's possible.

22 Q. Okay. And I'll -- and this will be
23 Defendant's -- go ahead.

24 A. I don't remember which one was -- I
25 know we had multiple. And I know there was one

1 where we were on the -- I was on the phone, because
2 I had a hearing in Greenville or the upstate, so we
3 did it -- I was in my car on the phone. I don't
4 remember which date was which.

5 (GAMBRELL EXHIBIT 4, Cole Creek
6 Homeowners Association, Inc. V. Stacey D. Poole
7 Status Conference, was marked for identification.)
8 BY MR. MASCIALE:

9 Q. Okay. And this will be Defendant's 4.
10 And is this the status conference report that was
11 filed in the HOA foreclosure action?

12 A. It looks like it.

13 Q. Okay.

14 A. I know David typed one up.

15 Q. And did you receive a copy of this?

16 A. I'm sure I did.

17 Q. Okay.

18 A. I mean, it has the file stamp on it, so
19 it would have been sent to me via the electronic
20 filing.

21 Q. And so here -- let's see. Well, first
22 we're going to look at length of trial where it
23 claims that no facts seem to be in dispute and it
24 seems that the case would be ripe for judicial
25 determination. Did you at that time disagree with

1 that characterization of the case?

2 A. I would. I mean, this is the
3 Plaintiff's status conference response to the
4 request from the judge. I didn't draft this.
5 Those aren't my scheduled conflicts. Those are
6 Mr. Wilson's.

7 Q. Okay. And here --

8 A. And I would dispute his formulation of
9 discovery issues. He never filed a motion to
10 compel, for example, and it's hard to complain
11 about discovery issues if you haven't compelled
12 them. But I know that we sent him photos and
13 pictures along the way, so I would -- I think his
14 -- and if you notice it's signed just by him. It's
15 not signed by me. So I mean, I realize that's his
16 characterization of it. That's not how I would
17 characterize it, and so...

18 Q. Okay.

19 A. I mean, I know what the document says.

20 Q. And you received that and you're aware
21 that that was how my clients viewed that -- the
22 posture of the case at the time; is that correct?

23 A. Sure.

24 Q. Okay. Let's see. Now, after that I
25 want to go to -- and this will be the first full --

1 let's talk about it. I believe in September of
2 2020, and these are attached as exhibits to the
3 complaint in this case, which I'll get to in a
4 minute, something happened with regard to notices
5 of a hearing with the master-in-equity in the HOA
6 foreclosure case; is that correct?

7 A. That's right. I think Lynn with the
8 master-in-equity's office either sent Mr. Wilson
9 and I an e-mail or she might have even called. I
10 don't remember. But essentially it was what are
11 some dates that you all would be available to come
12 to York and have a hearing. Because between this
13 period of time is when Judge Kimball retired and
14 there was a new master installed, and so there was
15 a period of time in which the new master I think --
16 I just think I read her name was Judge Weaver, was
17 given a period of time to kind of ramp up.

18 So I know that there was a discussion
19 about a range of dates, but I also know that there
20 was a -- and I think we had an agreement to, yeah,
21 exchange e-mails as to an agreeable date. I would
22 think it was all in e-mail. I don't think it
23 occurred by phone. So that would have been -- what
24 date that occurred, I'm not sure. My dad died in
25 July of 2020, and so I was out of the office a good

1 bit of time in the later part of July, early
2 August. Plus we had COVID going on, so the timing
3 of when things occurred during that period of time
4 is kind of -- I don't have a clear memory of the
5 sequencing.

6 Q. On or around September 9, 2020, did you
7 receive a notice of hearing sent by my clients in
8 the HOA foreclosure action?

9 A. I don't think I received it direct -- I
10 didn't receive it by e-mail. If my --

11 Q. He sent it by e-mail?

12 A. No, I don't think it was --

13 Q. Oh, okay.

14 A. I don't think it was sent by e-mail. I
15 think it was mailed. Not only was it mailed, it
16 was not mailed to me. It was mailed directly to my
17 client. Now, I think I was CC'd on it where there
18 was like carbon copies of it that were sent to both
19 me and to my client, but she got it well before I
20 did because I think he mailed it to -- yeah, the
21 certificate of service says the 9th of September,
22 2020. And so the notice of hearing was sent
23 directly to her and then to me, and because of the
24 COVID we weren't -- I wasn't necessarily in the
25 office every day. And one of the problems with

1 that location is the post office was not as
2 efficient as it should have been delivering the
3 mail, but I know for certain Stacey got it before I
4 did.

5 Q. Okay. It was sent to you both; she
6 just happened to receive it first?

7 A. That's correct, because it was mailed
8 from Charlotte, according to the envelope.

9 Q. Which makes sense.

10 A. She lives in Fort Mill and I'm in
11 Columbia, so -- well, that's -- the timing of the
12 sequence of who got what when is the only thing
13 that makes sense. I don't know why he's sending a
14 notice of hearing to begin with because we were
15 involved in the scheduling of it and it was -- I
16 mean, it was unnecessary since we had discussed
17 when the hearing was. We had a specific date
18 picked out with the master.

19 I don't know if you practice routinely
20 in front of the masters. The masters operate
21 completely different than circuit court in which
22 everything is arranged. Everything is scheduled.
23 So I mean, it really -- there's no roster like you
24 would normally have where they would publish a
25 roster and then it would be the responsibility of

1 the moving party to notify everyone else of the
2 publication of the roster. This is a -- this was
3 arranged like a dentist appointment or a doctor's
4 appointment. I mean, we knew we had an appointment
5 with the judge at that time on that date. I mean,
6 we were one of three cases for September 29th at
7 2:30.

8 Q. And I think, and correct me if I'm
9 wrong, I used to do a little bit of work with the
10 masters, but the party scheduling the hearing is
11 sort of required to send out a notice of hearing
12 under the rules; is that correct? I think at least
13 ten days prior to the hearing.

14 A. I mean, you could. I mean, I think the
15 rule does say that, but if I'm -- I know when I'm a
16 plaintiff and I'm scheduling stuff with the master
17 and the defendant is on the other -- is part of the
18 chain, I didn't send the notice to him because it
19 would be superfluous. I mean, not only that, with
20 electronic filing, why would you even physically
21 mail it to begin with? Why not just -- if you're
22 going to do it you can do it by electronic filing
23 so that it's -- I mean, it's done right then. It
24 seemed to be unnecessary to physically mail a
25 notice of hearing.

1 Q. Okay. But you would agree with me that
2 there's nothing, in and of itself, improper about
3 sending a notice of hearing if it's sent to the
4 correct party?

5 A. To the correct party, no, there's
6 nothing -- it does not violate the rule --

7 Q. Okay.

8 A. -- in the way you formulate it. Now,
9 is it necessary to physically mail it anymore, no.
10 We have electronic filing. There's no -- there was
11 no reason to physically mail it at all. Service by
12 electronic filing is effective just as mailing it.
13 So if the concern was, I want to be sure that the
14 defendant has notice of the hearing, I'm going to
15 inform his lawyer by filing it electronically,
16 which is how we file everything now.

17 Q. Okay. And just for clarity's sake, I'm
18 going to refer to the amended complaint that was
19 filed in the action. This will be Defendant's 5.

20 A. Right. Because that's -- I think I had
21 some Scrivener's errors. I think I used an older
22 complaint, federal complaint, that I had as the
23 model for the action and I forgot to delete some of
24 it, so I went back in and corrected it.

25 (GAMBRELL EXHIBIT 5, amended complaint,

1 was marked for identification.)

2 Q. Okay. And so speaking -- and we're
3 discussing this first notice of hearing dated
4 September 9th, 2020. And I believe you had said
5 that both you and your client received this notice
6 of hearing; she just received it before you?

7 A. She did. She received it well before I
8 did.

9 Q. Okay.

10 A. My recollection is one of the two -- I
11 know I had to have gotten both because I had the
12 envelopes.

13 Q. Okay. And when was the first time you
14 saw this particular notice of hearing, this
15 September 9th, 2020?

16 A. When she texted a picture of it to me
17 on a Friday evening at like eight or nine o'clock.

18 Q. Okay. Is that the date she received
19 it, I assume?

20 A. I assume.

21 Q. Okay. And what did you do in response
22 to receiving that text?

23 A. Now I'm looking at the notice. It was
24 sent the 9th. It was 9/11 the Friday that she got
25 it. Because I distinctly remember it was a Friday

1 evening. We -- our office closed early on Fridays,
2 so I was probably out of there probably close --
3 and this was football season, band season. So I
4 don't exactly remember what I had to do that Friday
5 night, whether it was a high school football game
6 or whether there was a band practice, but I had
7 remembered that I had gotten home from whatever it
8 was. She texted me, so then I immediately -- we
9 could remote log in. We had that capability before
10 COVID.

11 So I remoted in so that I could -- I
12 texted that photo -- I e-mailed that photo to
13 myself so that I could blow it up on my computer so
14 I could read it. Because my eyesight is not that
15 great. I have bifocals and all I could see it on
16 was my iPhone and the picture quality wasn't that
17 great.

18 Q. Okay. Then after reading that what did
19 you do next?

20 A. Without revealing privilege, I called
21 Stacey and had a conversation with her about the
22 substance of the hearing notice and told her
23 something that I can't tell you because of
24 attorney-client privilege.

25 Q. Did you explain the hearing notice to

1 her?

2 A. I will decline to answer that based on
3 the attorney-client privilege.

4 MR. RADEKER: Yeah, I'm going to have
5 to instruct him not to answer what explanation he
6 gave her and...

7 MR. MASCIALE: I'm not asking for the
8 substance of the explanation. I'm just asking if
9 he explained it to her.

10 BY MR. MASCIALE:

11 Q. And I think you already kind of
12 answered that. You said you had a conversation
13 about the substance of the notice.

14 A. Correct, I did.

15 Q. Okay.

16 MR. RADEKER: Yeah, I'm not trying to
17 make issues to go have motions about it if we can
18 avoid that. I know it can be difficult when a
19 lawyer is the witness to how do you do it and avoid
20 getting into privilege, so...

21 MR. MASCIALE: Yeah.

22 BY MR. MASCIALE:

23 Q. Okay. So after that conversation with
24 Ms. Poole, what -- did you do anything else in
25 response to her receiving that notice of hearing?

1 A. Not Friday night.

2 Q. Well, the conversation took place
3 Friday night?

4 A. Correct. It might have occurred Monday
5 night now that I'm looking at it, because it looks
6 like I sent an e-mail to Mr. Wilson on the 14th as
7 of 11:38 p.m., and so I must -- it must have been
8 Monday night, now that I think about it, the 14th,
9 because I'm not normally in the office that late at
10 night and there would be -- this was sent from my
11 computer, not from my phone. So I logged into the
12 computer system to send this e-mail.

13 Q. Okay. So you --

14 A. It must have been Monday the 14th, now
15 that I'm looking at my e-mail and the timestamp.

16 Q. Okay. So just to clarify then,
17 Ms. Poole sent you a picture of the September 9th,
18 2020 notice of hearing on Friday evening of --

19 A. No, I think it was now Monday evening.
20 I think it was Monday the 14th, not 11th.

21 Q. That's when she sent you the notice of
22 hearing?

23 A. That's correct. I think all of that
24 sequence of events occurred on the 14th.

25 Q. Okay.

1 A. Because of -- because I immediately
2 e-mailed Mr. Wilson. I didn't wait all day on
3 Monday to do it. I'm pretty sure that -- from the
4 tone and tenor of this e-mail, I'm pretty sure that
5 that's when I sent him that e-mail, was at 11:38 at
6 night. I did it before I went to bed and I'm
7 pretty sure I was so peeved off I didn't even go to
8 bed after that.

9 Q. Okay. And just to be clear, is this
10 the e-mail you're referring to, to Mr. Wilson?

11 A. That's correct.

12 Q. Okay.

13 A. You can see it was sent at 11:38 at
14 night.

15 Q. And is this before or after you had a
16 conversation with Ms. Poole on the phone?

17 A. This would have been after.

18 Q. After. Okay.

19 A. Because the first paragraph refers to
20 the contents of the hearing notice. And if you'll
21 notice I said "my client received the notice of
22 hearing in the mail." It doesn't say I received
23 it. She received it.

24 Q. Okay.

25 A. And so I was able to read both the fact

1 that he sent a notice directly to her and also that
2 it contained this paragraph that talked about that
3 she was in default.

4 Q. Which was not the case at the time,
5 correct?

6 A. That is correct. That -- as I said, in
7 the e-mail, that was patently false.

8 Q. Okay. Let's see.

9 A. And I think now my 9/11 recollection I
10 think is that second paragraph. I think I found
11 out on that day that I had a phone conference or
12 something of the sort on a federal case in
13 Charleston. I'm trying to remember which federal
14 case that would have been. I don't remember. But
15 essentially I got -- one of it was a hearing that I
16 physically had to attend and the hearing in
17 Charleston was a motions hearing, I think, that was
18 going to be done remotely, and I was the only
19 counsel that could do both. And since I knew Judge
20 Weaver scheduled things by the month in federal
21 court, you have no idea when things are going to
22 get scheduled, I made the decision that it was the
23 state court thing that had to move.

24 Q. Okay. And I'm almost done with this
25 first notice, but I just want to go through some of

1 this with you. Now -- and take a look for a second
2 just to refamiliarize yourself with it and let me
3 know when you're ready.

4 A. I'm ready.

5 Q. Okay. Do you disagree with anything --
6 or do you believe anything in the first paragraph
7 is inaccurate?

8 A. Yeah.

9 Q. And what is that?

10 A. For one, he's giving her legal advice,
11 from the first paragraph. When he says "you have
12 the option to appear at the hearing using the
13 remote communication technology such as
14 videoconference or telephone conference", that is a
15 -- that's a conversation that she and I need to
16 have about how and when to appear, what would be
17 better, what I was anticipating on doing.

18 Q. And you believe that's legal advice?

19 A. I think it goes to strategy. I think
20 it goes to courtroom tactics, courtroom strategies.
21 So yes, I think it falls into legal advice.

22 Q. And so this next sentence then, which
23 gives the master-in-equity's number to provide
24 further details about the hearing, if the
25 master-in-equity gave those details, would you

1 consider that legal advice?

2 A. No, but why would she call the
3 master-in-equity when she has a lawyer? She
4 shouldn't be calling the master-in-equity's office
5 at all. That's why she has a lawyer.

6 Q. Okay.

7 A. So all he's doing in that sentence is
8 confusing her.

9 Q. Moving to the second paragraph,
10 obviously I know you disagree -- or you believe a
11 lot of things in there or a lot of sentences in
12 there are inaccurate. So can you identify each of
13 those for me?

14 A. Sure. The first sentence is a complete
15 lie. It wasn't treated as an uncontested matter
16 and she didn't fail to plead. She pled in answers
17 required by law. So in telling someone that she's
18 failed to plead when she hired a lawyer to do just
19 that is -- it's a direct violation of the Rules of
20 Professional Conduct. Particular -- it's Rule 4.2.
21 I mean, this is a law school ethics class example
22 of something not to do. I mean, it's not a "may
23 not", it's a "shall not." He's telling her at this
24 point that her lawyer has failed to plead as
25 required by law. So that's an enormous problem.

1 In effort not to increase attorney's
2 fees, he knew that he was going to show up to
3 present in person. So the second sentence is a
4 lie. He knew he was going -- David Wilson was not
5 going to appear by affidavit in this case. He was
6 going to show up and present. And then he's -- the
7 second -- and then the next sentence is half of a
8 lie because he says he's not going to present live
9 testimony unless you appear and contest. Well,
10 that's what we filed an answer and a counterclaim
11 for.

12 And then he directs my client at the
13 time to call him if she's intending to appear. Why
14 in the world is he ever telling her to call him?
15 He has no right to do that. He has -- in fact, he
16 has an ethical responsibility not to do that. I
17 mean, I've got Rule 4.2 in front of me, and comment
18 one goes to the very heart of why this just -- it
19 still ticks me off. It says "this rule contributes
20 to the proper functioning of the legal system by
21 protecting a person who has chosen to be
22 represented by a lawyer in a matter against
23 possible overreaching by other lawyers who are
24 participating in the matter, interference by those
25 lawyers with a client-lawyer relationship, and the

1 uncounseled disclosure of information related to
2 that representation."

3 What he did by telling her to call him,
4 frankly is what he did by the whole notice, is
5 interfere with my relationship with my client.

6 Q. Okay. And everything you've just
7 testified to, is that also your understanding of
8 those statements at the time you received the
9 notice of hearing?

10 A. That's correct.

11 Q. Okay.

12 A. And if -- and then he says "if you fail
13 to do so." So he's saying -- it's a threat. If
14 she doesn't call him he may ask the Court to
15 reschedule it so he can increase his attorney's
16 fees. So that entire second paragraph, besides the
17 problem I pointed out in the first paragraph,
18 almost every jot and tittle in that second
19 paragraph is a direct violation of Rule 4.2 and
20 it's a violation of the FDCPA. I mean, the FDCPA
21 points out in Subsection (c)(2) that "if the debt
22 collector", who is Mr. Wilson, "knows the consumer
23 is represented by an attorney with respect to such
24 debt and has knowledge of or can regularly
25 ascertain such attorney's name and address, unless

1 the attorney fails to respond within a reasonable
2 period of time to a communication from the debt
3 collector or unless the attorney consents to direct
4 communication with the consumer."

5 Now, there is no exceptions for
6 scheduling. There's no exceptions for legal
7 process. He has an ethical responsibility, but he
8 has a legal duty under the FDCPA as a debt
9 collector to never call my client anymore. The
10 only time he's permitted to talk to my client
11 directly is in a deposition. Once I have appeared
12 it triggers 1692c subpart two and 4.2.

13 So I don't understand how in God's
14 green earth this notice ever made it out of his
15 office. I really don't. What it tells me -- what
16 this -- in my experience having done this kind of
17 debt collection before, what it tells me is they
18 have an automated system, a computer system that
19 they use to track scheduling and deadlines, and
20 they -- somebody put in the date of this hearing
21 and instead of saying, whoa, this is a contested
22 matter, let's not -- let's do something different
23 or the same -- because I know the system that we
24 used at Rogers Townsend, if an attorney made an
25 appearance, then we actually disabled that file

1 within the automated system to prevent something
2 like this from happening. And so then it was
3 created -- we created a different way of handling
4 those files in our system. Rogers Townsend at the
5 time, I don't know if they do now, essentially had
6 one system for collection actions and one system
7 for every other type of litigation they did. And
8 when a contested foreclosure started -- occurred
9 that system -- the paralegal on that file went in
10 and closed that out of the automated system and
11 opened it in the contested system so that it
12 wouldn't generate these automatic hearing notices.

13 And so -- because you can tell -- wait,
14 you're scrolling too fast. Go back up. If you
15 look at the -- go back to the top of this whole
16 page. Okay. Yeah, if you come down to where the
17 signature is. A little more. A little more. A
18 little more, where you can see the line at the
19 bottom. It's not on that page. It must be on the
20 next page. There's like a line or there's some --

21 Q. That?

22 A. Yeah, it's the certification of
23 compliance, that looks -- that SCCA/256A looks like
24 that that's some sort of...

25 Q. Are you okay?

1 A. I know what that is. That's a form
2 number from the court system.

3 Q. Okay. That's a court form then?

4 A. Yeah, I think so. It's a certification
5 of compliance.

6 Q. Okay. Well, I'm going to move on.
7 So --

8 A. But everything else in that looks like
9 it was automatically generated.

10 Q. So -- go ahead.

11 A. Because it looks like it just filled in
12 the dates and times and names.

13 Q. Okay. And I know we talked about this
14 e-mail already. Okay. And now I'm going to scroll
15 down to this e-mail from David Wilson, Tuesday,
16 September 15th, 2020 at 8:09 a.m. Did you receive
17 this e-mail from Mr. Wilson?

18 A. I did, but this copy is something that
19 I printed out because you can see my name at the
20 top. That's our Outlook print-out things from...

21 Q. And after you received this e-mail did
22 you do anything else or did you do anything further
23 in regard to that September 9th, 2020 notice of
24 hearing?

25 A. I called my client and I did reply to

1 this e-mail, I believe, to get some October dates
2 to reschedule.

3 Q. Okay. So you called your client a
4 second time?

5 A. I'm sure I did. I called her after
6 this e-mail came in. What we discussed I will not
7 talk about because it's attorney-client. And then
8 I replied to that e-mail with October dates to
9 reschedule. I'm pretty sure that was the order of
10 sequence. I may not have talked to Stacey directly
11 at 8:09 in the morning. I normally go to the
12 office that early, so I probably was in the office
13 when this e-mail came through. I probably waited
14 up until the morning to call her because I don't
15 know what people's work schedule -- and I may have
16 even just e-mailed her and said, hey, call me,
17 because I don't know what people's work schedules
18 are. My dad worked swing shifts for 30 years and I
19 don't like to -- if somebody is trying to sleep I
20 don't want to call them. So I probably -- that's
21 probably what I did, but I don't remember.

22 Q. Okay. Did you ever forward Ms. Poole
23 David's e-mail?

24 A. I don't remember. Whether I did or
25 didn't, it would be privileged, but I don't

1 remember. I might have. I might not have. I
2 might have just -- since it's so short I might have
3 just simply characterized it.

4 Q. I'm sorry?

5 A. I might have just said what it said and
6 not --

7 Q. Okay. You believe she was aware of the
8 e-mail or the substance of the e-mail?

9 A. That's correct, my understanding.

10 Q. Okay. Now -- and was anything else
11 done after that or was the matter kind of dropped
12 at that point?

13 A. It was dropped at that point other than
14 to -- excuse me, other than to contact Mr. Wilson
15 for those hearing dates.

16 Q. Okay. Now, afterwards -- and now I'm
17 getting into the second notice of hearing which is
18 dated September 18th, 2020.

19 A. Sorry, I just noticed that he did
20 e-file it on 9/10, but I don't know when that was
21 accomplished. It says "completion date." I don't
22 remember seeing or uploading or downloading that
23 hearing notice. And it might have been I was -- I
24 don't remember. I don't know why I didn't see it
25 that day.

1 Q. That was filed September 10th?

2 A. I don't know if I was out sick. For
3 some reason I didn't look at my work e-mail that
4 morning, if I had some sort of hearing or motion or
5 -- I don't know. I didn't see it on the tenth.
6 And in fact, I know I didn't see it until Stacey
7 sent it to me, and I think that might have been
8 when I went into my e-mail to check.

9 Q. Okay.

10 A. Yeah, I see that looking at it now, but
11 I know for certain the first time I saw it was when
12 Stacey sent it to me.

13 Q. Okay. And I think we touched on this
14 before, but just because now it was brought up,
15 since you were an authorized e-filer, you would
16 have or your understanding of the system is that
17 you would have gotten the notice of this filing at
18 1:56 -- or I'm sorry, 1:58 p.m. on September 10th,
19 2020?

20 A. That's correct. I might have seen it
21 pop up and not looked at it because, again, he and
22 I had discussed the hearing, so I knew it was
23 coming, so I probably already had it on my calendar
24 to go to it that day and may simply not have gone
25 through the -- because unlike PACER our ECF system

1 doesn't have a link. So in order to pull the
2 document there's like three or four steps you've
3 got to do. And so since I knew when the hearing
4 was going to be I may not have even -- I might have
5 gotten the e-mail notification and simply not gone
6 and pulled the document if I was -- it wouldn't
7 have been necessary for me to look at it at that
8 moment because I already knew about the hearing.

9 Q. Okay. And --

10 A. And I knew the substance of what the
11 hearing would have been about, so it wasn't like
12 there was any information within it that I wouldn't
13 have already known, like the address or the master
14 or anything like that.

15 Q. Okay. And I want to go to now the
16 second notice of hearing, which I'll get back to
17 Defendant's 5 in a bit, but just to -- along the
18 same lines of the e-filing, I know you -- well,
19 first of all, when did you first receive this
20 notice of hearing, the notice of hearing dated
21 September 18th of 2020?

22 A. Probably when it was filed. I don't
23 have my calendar from that period of time, so I
24 don't know if I was on the road in depositions or
25 whatever, but I know that -- I know I saw it pretty

1 soon thereafter because I think my reaction was
2 something to the effect of, I can't believe he did
3 it again.

4 Q. So on the day it was filed, then you
5 were already aware it had been sent to Ms. Poole
6 again?

7 A. That's what it said. I mean, if you
8 look at the notice of hearing on the 18th --

9 Q. Let me get back to -- hang on.

10 A. -- it clearly says that's what he's
11 doing.

12 Q. Sorry.

13 A. On the certificate of service it
14 says --

15 Q. And this is the -- just to clarify,
16 this is the copy that was filed with -- as an
17 exhibit to the complaint, so I believe you redacted
18 Ms. Poole's address.

19 A. That's correct. Which is not redacted
20 in the state court system, but that's not my --
21 that's his compliance for the e-filing rules, not
22 mine.

23 Q. Okay. And when you received this
24 notice of hearing what did you do thereafter?

25 A. Without revealing confidential

1 attorney-client information, I contacted my client
2 and then...

3 Q. And when did you do that, first of all?

4 A. I have no idea. I don't know if it was
5 that day. That would have been -- it would have
6 been 11:28 in the morning. I don't know if it was
7 later that afternoon or if it was the next day. I
8 don't remember.

9 Q. But it was -- would you say it was
10 within a day of receiving that notice?

11 A. I feel relatively confident that that's
12 what happened. Because I certainly didn't want a
13 repeat of her getting the hearing notice in the
14 mail and having a less-than-optimal response.

15 Q. Okay. So when you called her then just
16 to -- I'm just trying to get the timing down, she
17 -- had she received that notice of hearing yet?

18 A. I'm not sure I called her. I might
19 have forwarded it to her by e-mail with
20 instructions.

21 Q. Okay.

22 A. I don't remember whether I called her,
23 whether I e-mailed her. I don't remember.

24 Q. Okay. But you're certain you did
25 contact her?

1 A. I did contact her and I feel reasonably
2 certain that it was before she would have received
3 it in the mail, but I can't say that with
4 absolutely certainty, but, I mean, it's possible
5 she got the second one before I did based on --

6 Q. The same day?

7 A. She would have gotten it the same day
8 via electronic filing, but, I mean, I just don't
9 remember.

10 Q. Okay.

11 A. And there was a substantial amount of
12 that time that I was having to go back and forth to
13 and from Greenville where my mom lives, dealing
14 with certain aspects of my dad's passing. So I --
15 like I think my mom had had hip surgery a couple of
16 weeks before my dad died and so I needed to go back
17 and go to the doctor with my mom. So there was
18 times when I was not physically in the office -- or
19 certainly wasn't physically in the office because
20 of COVID, but there were also periods of time in
21 which I was simply not there because I was dealing
22 with family-related stuff.

23 Q. Okay.

24 A. So I don't remember how I communicated
25 it or when I communicated it. I feel fairly

1 certain that it was before that she got the second
2 one.

3 Q. Okay. And did you --

4 A. But I will say that if I've written
5 something or she says something to the contrary,
6 I'm not disputing that. I'm just -- again, without
7 a timeline, without our -- without my internal
8 notes or anything like that that I would have kept,
9 I don't remember.

10 Q. Right. I see. And going through the
11 second notice of hearing, we don't have to go
12 through each statement again unless you want to,
13 but would you agree with me that other than the
14 hearing date and time it's a verbatim copy of the
15 first notice of hearing dated September 9th, 2020?

16 A. I would agree with you that it is an --
17 that it is virtually identical except for the
18 addition of the word "amended" and the change in
19 the dates. But what it also shows me, both the
20 first one and this one, since they were both
21 electrically filed, it's the first time -- I can
22 kind of forgive a mistake, which I did actually. I
23 raised it. I felt like I got it off my chest.
24 Having practiced in a high volume debt collection
25 firm I understand sometimes things happen.

1 But particularly because it was e-filed
2 and it was e-filed that day, that meant either --
3 that just proves to me he has reviewed it before it
4 went into the system. It is as if he signed it.
5 That's Rule 11. He has -- his S slash at the
6 bottom of that is his representation to the world
7 and particularly to the Court that he has reviewed
8 and approved this prior to filing.

9 So on the first one it gets filed and
10 he says it was inadvertent and he didn't see it,
11 okay? But the second time around it happens
12 identically again and he has S slash signed it and
13 filed it and at least at some point put it in the
14 mail. So at some point in time he's telling the
15 Court he has reviewed this under Rule 11 and signed
16 it, excuse me, when -- and scroll up. Is this the
17 one that was -- this was not the one that was
18 e-filed. I think I waited to scan this one in as
19 the mailed copy when I got the envelope.

20 Q. Now because --

21 A. Because the e-filed one would have --
22 the e-filed one would have the ECF on the side.

23 Q. Yes.

24 A. Whereas the federal court puts it at
25 the top.

1 Q. Right.

2 A. This is the one that was filed in the
3 federal court, so this would have highly likely
4 been the physically mailed one that I got in the
5 mail and I scanned in with the envelope.

6 Q. Now --

7 A. But getting back to the point I was
8 making, even if you assume that the first filing is
9 inadvertent and you believe what David says, that
10 it was a paralegal that didn't know any better and
11 she was just sending out a batch of hearing notices
12 and this one just slipped through, then how in the
13 world did one just quote/unquote slip through and
14 get e-filed? And not only does he do it once, he
15 does it twice. So the second time is the one that
16 -- I had a really severe problem with the first
17 one. I'm still not understanding how you make the
18 same mistake twice, particularly when you've been
19 warned about it. That's a problem.

20 Q. And you're aware that there were two
21 affidavits filed in connection with our first
22 motion to dismiss that addressed that issue; is
23 that correct?

24 A. Yeah. I mean, I know what the motion
25 -- I know what your memo says, but I also know

1 that, as a factual matter, he's e-filed these
2 hearing notices, and under Rule 11 he's required to
3 read them. And if he's reading this, then doesn't
4 the 4.2 violation just simply jump off the page?
5 Why in the world does he have an address of a
6 represented party on the notice of hearing to
7 physically mail out? And it was physically mailed
8 out because if you scroll up, I got it and she got
9 it. In fact, if I'm recalling, this is not just my
10 copy. This is actually her copy that she scanned
11 and e-mailed me. So I'm not the one that actually
12 e-mailed and scanned it in. I believe Stacey
13 e-mailed me exactly what she received.

14 Q. Okay. And we talked a little while ago
15 about this, the electronic signature, e-filing and
16 mailing, but let me ask you this: When you were
17 doing actual litigation work and doing filings and
18 mailings and everything, did you personally e-file
19 all of your pleadings and motions and send and
20 serve any documents by mail all the time?

21 A. I always e-filed my own documents,
22 federal or state court, because e-filing is the
23 equivalent of me signing a pleading, and that's why
24 I've never had a stamp of my signature. I know
25 some lawyers have done that in the past. I have

1 not done it, would never do that, because, frankly,
2 an attorney in one of the firms I worked in,
3 Ratchford & Hamilton, when she left -- she left
4 Ratchford & Hamilton and went to work for Brock &
5 Scott. A paralegal started filing bankruptcy court
6 pleadings using her electronic signature that she
7 had not reviewed. And Judge Waites was less than
8 enthusiastic about the practice and suspended her
9 from the practice before bankruptcy court and
10 levied a substantial fine against Brock & Scott.
11 So after those events occurred no one in the office
12 had my either -- either password. I never gave
13 those out.

14 Q. After those events occurred do you mean
15 prior to those other people in your office had your
16 login and password?

17 A. No, no, they never did anyway, but I
18 would certainly -- after that event it was like my
19 -- it validated my thought to never give that
20 information out.

21 Q. Okay. So it's your testimony then that
22 you've never used a legal secretary or a paralegal
23 to do any of your filings or mailings?

24 A. No, I didn't say anything about
25 mailings. Mailings is different. I would have

1 signed it, but someone else would have physically
2 licked the envelope to put it in the mail.

3 Q. Okay.

4 A. But as far as -- a legal assistant
5 might have printed it and brought it to me for
6 signing and then physically mailed it, but when we
7 were still signing things by pen that signature was
8 always mine. The only exceptions would have been
9 if I was out of the office on vacation or in a
10 deposition, then another lawyer in the office would
11 have signed it for me.

12 Now, certificates of service are
13 different. Certificates can be signed by staff
14 because all that is is an affidavit saying that I,
15 so-and-so, have put this in the mail. But as far
16 as pleadings go, things that required a lawyer's
17 signature, that was always a lawyer's signature
18 either mine or someone -- another lawyer in the
19 office. I would have -- I would not have ever
20 allowed a staff member to e-file something for me.
21 That is an absolute recipe for getting in trouble
22 and/or getting disbarred.

23 Q. Okay. And for the sake of brevity, on
24 the second notice of hearing, I know you said it's
25 a -- I think you said it's an almost identical copy

1 except with the "amended" added and the dates
2 change. Is it fair to say the same inaccuracies or
3 disagreements you pointed out in the first notice
4 of hearing can also be incorporated with regards to
5 this notice of hearing?

6 A. That's correct. I mean, that is
7 equally false as the first one. In fact, even more
8 so because at some point in time somebody had to go
9 in and add the word "amended."

10 Q. Okay. And after you received this you
11 sent this to Ms. Poole; is that correct?

12 A. I don't know. I don't know if I sent
13 it to her. I let her know -- without saying
14 exactly what I said, I informed her of something
15 important regarding the circumstances.

16 Q. Okay. And so would it be fair to say
17 that she was aware of this second notice of
18 hearing, is that correct, before she received it or
19 she was aware of the mailing of it and your
20 disagreements with its substance?

21 A. I don't know if I can answer the way
22 you posed it.

23 Q. You discussed the notice of hearing,
24 the substance with her; is that correct?

25 A. I can't -- the attorney-client

1 privilege prevents me from testifying what I've
2 discussed.

3 Q. Okay.

4 A. I can say that it is my understanding
5 that Stacey was not surprised when the second
6 notice showed up.

7 Q. Okay. And then at that point what did
8 you -- well, you filed a -- so you believe you
9 received the second notice of hearing sometime
10 around September 18th, 2020; is that correct?

11 A. I received the e-signature that day. I
12 think I -- I know we waited until Stacey received
13 the mailed copy to be sure that he had physically
14 mailed it because it was possible they just used
15 the same form and e-filed it and did not mail it.
16 I was trying to give Mr. Wilson the benefit of the
17 doubt, but then when it showed up -- and like I
18 said, I'm pretty sure this is -- the one that I
19 e-filed was the one that Stacey physically
20 received.

21 Q. Okay. And now, September --

22 A. Because you could see on the envelope
23 that it's not addressed to me, it's addressed to
24 Stacey. In fact, if you'll even notice the
25 envelope, it's even more egregious than even what I

1 remembered because they didn't just print a label.
2 Someone had to physically handwrite her address on
3 to that envelope. It's not a preprinted envelope.
4 So someone had to take the time to write out that
5 address before they put it in the mail.

6 So yeah, now that I'm recalling this,
7 we waited until she physically received it. And if
8 you could see that, that it's postmarked that day
9 and it's been mailed by -- I assume that e-stamp
10 account traces back to Black, Slaughter and Black,
11 and it looks like it was mailed on that September
12 the 18th.

13 Q. Okay. And now -- so you've waited
14 until you received the mailed copy. Then you filed
15 your motion for sanctions on September 30th, 2020;
16 is that correct?

17 A. That's correct.

18 Q. Okay. And this will be I think
19 Defendant's 6.

20 (GAMBRELL EXHIBIT 6, motion for
21 sanctions, was marked for identification.)

22 BY MR. MASCHIALE:

23 Q. It's really -- I don't know if I'm
24 really going to ask you too much about the
25 substance of it other than you filed -- you filed

1 this motion for sanctions based on these two
2 notices of hearing. Was there -- is there anything
3 else supporting the motion? Were there any other
4 alleged violations of either the Rules of
5 Professional Conduct or the FDCPA?

6 A. I don't think I elaborated in the
7 motion for sanctions as much about the different
8 points that I've made in the deposition. I think I
9 relied on the fact that the e-mail -- the contents
10 of the e-mails themselves and the sequence. And I
11 did, I think, file a motion to a memo of law in
12 support that would have elucidated various points
13 of 4.2 and what a violation of that consists of.

14 Q. And then you filed this case officially
15 on -- let me make sure I get the timing right
16 because I was looking at the amended complaint.
17 You filed this case initially --

18 A. I filed it on --

19 Q. -- on October 2nd, 2020; does that
20 sound right?

21 A. The timestamp on this is 10/30/20.

22 Q. Well, that's the amended complaint.

23 A. Okay. Then, yeah, if you've got the
24 date of the initial.

25 Q. Yeah, it looks like it was dated

1 October 2nd, 2020. Whose decision was it to bring
2 -- well, one to file the motion for sanctions in
3 the HOA foreclosure case?

4 MR. RADEKER: Yeah, I'm going to
5 instruct him not to answer that. That's either
6 privileged or work product or both.

7 MR. MASCIALE: Yeah, I mean, I think it
8 goes to -- I think it does kind of go to the
9 motivation -- one, the bad faith issue as well as
10 the potential attorney's fees recovery. I
11 certainly understand if you want to object to that.

12 MR. RADEKER: Yeah, I'm going to have
13 to instruct him not to answer just to do my job to
14 protect privileges, so...

15 BY MR. MASCIALE:

16 Q. Okay. Well, let me see if I can -- we
17 will see if I can straighten it out a little --
18 straighten the questioning out a little bit.

19 So just to clarify for accuracy, in
20 response to receiving these two notices of hearing,
21 if I got your testimony correctly, you discussed
22 them with your client a total of three times?

23 A. It might have been more than that. I
24 don't have a specific recollection of how many
25 times. It might have been a combination of e-mails

1 and phone calls. I mean, again, I don't work for
2 the Law Office of Jason E. Taylor anymore, so I
3 don't have access to anything that would be
4 informative as far as how many times and when she
5 and I either talked on the phone or traded e-mails.
6 Some clients are easy to get on the phone. Some
7 clients are impossible to get on the phone. And I
8 don't remember what kind of client Stacey was,
9 frankly, as far as ease of communication.

10 Q. Okay. Was the FDCPA ever raised?

11 MR. RADEKER: I'm going to have to
12 instruct him not to answer that. That would be --
13 I mean, that's the essence of privilege, is you're
14 asking him what he talked to her about.

15 MR. MASCIALE: Well, I don't know if
16 it's anything necessarily specific other than just
17 the cause of action which they've alleged against
18 Black, Slaughter & Black. I think that's probably
19 -- I mean, I don't want to go too much further into
20 that, but I think that's probably fair.

21 MR. RADEKER: Well, I mean, I guess
22 it's safe -- like I'm instructing him not to answer
23 it on attorney-client privilege grounds, so -- and
24 we'll talk about it when we get -- sometime after
25 we get done like within the next day or so, but

1 like I'm hoping to avoid having to have motions
2 about these instructions not to answer if we can,
3 but I've got to protect the privilege, too.

4 BY MR. MASCIALE:

5 Q. Okay. Well, then just for the record,
6 was the South Carolina Unfair Trade Practices Act
7 ever discussed?

8 MR. RADEKER: Same instruction.

9 BY MR. MASCIALE:

10 Q. All right. And I think you did say,
11 though -- well, actually I'll move on.

12 A. Certainly you said about bad faith and
13 filing the action. I don't understand how and when
14 a lawyer can break the Rules of Professional
15 Conduct to directly communicate with my client and
16 then all of a sudden the assertion of my client of
17 her rights under federal law somehow becomes bad
18 faith. If that's where you're headed with this I
19 think you're -- I think -- I just don't have
20 anything positive to say or think about that.

21 Again, no one forced David Wilson to
22 directly communicate with my client, and then threw
23 his own staff under the bus in front of the judge
24 when he did it. To me that was -- yeah, he should
25 have owned that mistake. He's the one that e-filed

1 it. If he shouldn't have he should have said that,
2 but that's not been his approach. It was, oops, my
3 bad. Not "I'm sorry", not "it won't happen again."
4 He just -- he characterizes it as inadvertent.
5 Inadvertent is when I accidentally spilled coffee on
6 myself a little while ago. E-filing a notice that
7 violates the Rules of Professional Conduct and the
8 FDCPA is a little more than inadvertent.

9 Q. Well, let me ask you this: During the
10 duration of your involvement in the foreclosure
11 case, did David Wilson or anyone from Black
12 Slaughter & Black ever communicate directly with
13 your client other than those two notices of
14 hearing?

15 A. Not that I'm aware of, no, other than
16 the initial service -- other than the initial
17 service of the summons and complaint, which is
18 proper. But as soon as I filed the notice of
19 appearance all communication is required to stop.
20 So should I applaud them for obeying the rules
21 98 percent of the time, no.

22 Q. And other than those two notices of
23 hearing and up until that point they had been
24 communicating only with you and your office; is
25 that correct?

1 A. That's correct.

2 Q. And after those two notices of hearing,
3 from September 30th or thereabouts, 2020 onward,
4 they only communicated with you and your office; is
5 that correct?

6 A. Until -- that's correct, until the time
7 I stopped representing Stacey. But I understand
8 that the -- that period of time was after we had a
9 motions hearing on the motion for sanctions as well
10 in which Mr. Wilson was severely admonished by
11 Judge Weaver about violating the Rules of
12 Professional Conduct. And so I would think that
13 after having a judge directly admonish you for
14 violating what -- I understand sometimes issues of
15 privilege get kind of confusing. I understand
16 issues of client relationships when you have
17 multiple clients could be somewhat difficult to
18 understand. But this Rule 4.2 is seriously the
19 easiest rule in the world to comply with. Don't
20 mail stuff to opposing parties. I mean, it's kind
21 of like that Jim Carrey moment in Liar Liar when
22 they ask -- when the secretary says "I've got a
23 client on the phone that needs legal advice" and he
24 shouts in the phone "stop breaking the law,
25 asshole." I mean, that's kind of how simple

1 compliance with 4.2 is. You just don't do it.

2 And I don't understand how in the --
3 not only do you do it once, he did it twice. And
4 like I said, I forgive the first time because I get
5 it. I mean, you have an automated process.
6 Sometimes it hard for, you know, Ford makes lemons
7 on the same assembly line they make good parts, but
8 the second time around is a little more -- that's
9 why I -- that's when the motions and this suit got
10 filed. It wasn't after the first time. It was
11 after the second time. It was after being warned
12 not to do it and he does it again. That to me goes
13 from accident to intentional.

14 And I would also note the FDCPA
15 liability statute. There's no intent involved.
16 It's if you do it you're liable. So in actuality
17 we could have sued after the first one, but we
18 didn't. We waited until after the second one.

19 Q. Okay. And I'm almost done.

20 Okay. So circle back to the motion for
21 summary judgment. Do you know -- I know you had
22 said, first of all, with regard to the motion for
23 sanctions that Mr. Wilson was admonished by Judge
24 Weaver. Were any other sanctions or were any
25 substantive sanctions imposed on him?

1 A. No, but I raised to Judge Weaver that
2 we would file the action under the FDCPA and we
3 would seek relief under that statute. And so she
4 was aware that federal action was pending at that
5 time, so we didn't -- I believe what my
6 recollection is, I told her that in relation to the
7 motion for sanctions in state court, that the
8 appropriate remedy before her was the admonishment,
9 which is what she did. We didn't seek -- because
10 we would be seeking FDCPA -- damages under the
11 FDCPA to avoid the appearance or even the argument
12 of double dipping. The admonishment was the
13 appropriate relief in state court. And I do not
14 know if she reported Mr. Wilson to the disciplinary
15 council. I did not.

16 Q. Okay.

17 A. But she is required to under the rules
18 of -- the canons of judicial conduct if there's an
19 issue of compliance with the Rules of Professional
20 Conduct.

21 Q. Now, are you aware of how the motion
22 for -- the Plaintiff's motion for summary judgment
23 worked out? Are you aware of the disposition of
24 that motion?

25 A. I think Drew told me that there was a

1 partial grant, but then there was a motion to
2 reconsider. I mean, other than that, that's all I
3 know. I don't know anything about -- I haven't
4 read the order. I haven't read the motion to
5 reconsider. I routinely don't make it a habit of
6 reading pleadings that I'm not interested in
7 because I have enough to read.

8 Q. And just --

9 A. And that was -- and it's now -- and
10 Stacey is now his client, not my client.

11 Q. And just to confirm, at the time you
12 filed the motion for sanctions you were aware that
13 a motion for summary judgment had been filed by the
14 plaintiff -- well, first of all, you were aware
15 that a motion for summary judgment had been filed;
16 is that correct?

17 A. I was aware.

18 Q. Okay. And you were also aware that the
19 motion for summary judgment was based in large part
20 on your client's failure to respond to requests for
21 admission?

22 A. I know that that was one of the
23 arguments advanced by the plaintiff.

24 Q. Okay.

25 A. But certainly --

1 Q. Go ahead.

2 A. But I don't see how that permits or
3 excuses a violation of the FDCPA. There's even
4 case law that says that the validity of the
5 underlying debt is of no relation to the violation
6 of the statute. In other words, you can be
7 collecting a proper debt all you want all day long,
8 but you can't violate the statute. In other words,
9 it's not a -- just because the debt might be valid
10 is not a get-out-of-a-responsibility free card.
11 I've seen it where like an a hundred dollar debt
12 ends up with a large FDCPA judgment. So sometimes
13 those numbers -- or in fact, the amount of the debt
14 and the amount of the award under FDCPA is of no
15 relation.

16 Q. And I think, as we discussed earlier,
17 you and your client weren't actually disputing the
18 validity and the amount of the alleged debt; is
19 that correct?

20 A. That's correct, which is the reason why
21 Mr. Wilson shouldn't have contacted her either
22 time.

23 Q. Yeah. And yet there was nothing
24 actually done or filed to oppose summary judgment
25 for her liability for these alleged assessments,

1 was there?

2 A. I would greatly dispute your assessment
3 of nothing. We filed a memo in opposition. I
4 filed one, two, three, four, five things including
5 this evidence. Part of the dispute with the
6 homeowners' association also involved the way they
7 were going about collecting the debt. It had to do
8 with an argument about whether a homeowners'
9 association has the right under South Carolina law
10 to use foreclosure as a remedy or whether it's
11 action at law versus an action in equity, which is
12 the point I made earlier about Winrose.

13 So that was part of the argument, was
14 that even if the debt was valid, the mechanism of
15 collection was improper. They were -- essentially
16 they had legal damages, but were seeking an
17 equitable remedy which is first year law, you can't
18 do. So there were complex issues in the case that
19 went beyond simply who wrote what to who, but also
20 it involved the propriety of the collection method,
21 the validity of the collection method, and whether
22 that method would be allowed to persist or
23 continue.

24 Q. Right.

25 A. To some extent Winrose, the Supreme

1 Court kind of -- although I think not completely
2 and not correctly validated the arguments we were
3 making about the --

4 Q. Yeah, I certainly -- I've seen that
5 argument before where an attorney will say Winrose,
6 and I know what it says. I mean, I know it's
7 mostly -- but it is -- it expresses the Supreme
8 Court's distaste for that, but I think you -- would
9 you agree with me, though, that in any -- in a debt
10 collection action one of the principal factual and
11 legal issues to be established is the validity of
12 the underlying debt?

13 A. That's certainly one element, but you
14 also have to establish the right to collect. You
15 also have to establish -- I mean, again, just
16 because someone owes money doesn't mean they owe to
17 the penny what you said they owed. For example, it
18 could be they calculated the interest incorrectly.
19 They could be trying to collect debt that had
20 expired because of the statute of limitations. I
21 mean, there is -- there's a lot of different
22 factors that go into -- having been on both sides
23 of the debt collection litigation issue, a
24 plaintiff still always bears the ultimate
25 responsibility of proving -- of proving liability.

1 And if I had a nickel for every answer that flatly
2 denied liability for every litigation I filed, then
3 I would have a house in Italy right now because
4 every answer filed in every case in South Carolina
5 contains a general denial and contains denials of
6 alleged facts from beginning to end.

7 I mean, I was thinking of an example as
8 you were saying something of an action I filed in
9 which I said -- well, like this one, for example,
10 the 4.2 violation is in black and white and yet the
11 answer in this case denies that it's a violation.
12 I mean, so the general denial is not -- I mean,
13 again, it was ultimately up to the association to
14 prove the debt. And then also collect it in a way
15 that's proper both legally under federal law, but
16 also under South Carolina law. So for example, you
17 can't collect debt that's more than three years
18 old. It's expired by the statute of limitations.
19 You should have done it a long time ago, even on a
20 revolving account. So it's their responsibility to
21 prove the debt. I don't have to admit as an answer
22 to anything. I just denied it and that's --

23 Q. That's subject to Rule 11, correct?

24 A. Correct, yeah, right, but should Drew
25 file a Rule 11 motion because of the violation of

1 failing to admit that this is a violation of Rule
2 4.2, I mean, I think it's pretty self-evident that
3 it is.

4 Q. Well, at the time the answer and
5 counterclaims were filed was there any -- was there
6 a -- was there a factual basis to deny that she
7 owed that -- or that she did not owe unpaid
8 assessments to the HOA?

9 A. Yes.

10 Q. And what was that?

11 A. I mean, that there was damage to her
12 unit because of failure to maintain the common
13 elements. And the -- at the time of the filing of
14 the summons and complaint that was -- the failure
15 to abide by the restrictive covenants was a major
16 issue. I'm pretty sure it's still an issue, so --

17 Q. So the admissions -- the resulting
18 admissions from her failures to respond, is it your
19 testimony then that they contradict your position
20 regarding disputing the debt?

21 A. They do, I think. I mean, it does
22 contradict, but under housing it removes that. I
23 understand the consequences of failing to respond
24 to requests to admit.

25 Q. Okay.

1 A. But that doesn't undermine -- I still
2 don't understand how that relates to or connects to
3 the failure of Black, Slaughter & Black to follow
4 the FDCPA. Again, a valid -- you can collect a --
5 you can violate FDCPA while you're in the process
6 of collecting a valid debt. Those two are not
7 linked issues.

8 Q. Right. And I know --

9 A. If they were linked, then no one could
10 ever sue for FDCPA because --

11 Q. Okay.

12 A. -- in 99.9 percent of the time these
13 actions arise not out of the collection of an
14 improper debt, but the collection of a valid debt.
15 So I understand --

16 Q. Well, and I --

17 A. -- the discussion we're having, but I
18 just don't see the --

19 Q. That's fine.

20 A. -- how the two issues are legally
21 linked.

22 Q. That's fine. Well, I'll close with
23 this. You testified just earlier regarding the
24 need to establish the amount of debt and calculate
25 it correctly, everything like that. Is there --

1 and I think I know this, but there was nothing done
2 to dispute the amount of the alleged debt, was
3 there, the validity of the amount?

4 A. I know we served discovery. I don't
5 remember anything beyond that.

6 Q. Okay. And no --

7 A. And assuming, too, that we would have
8 had a hearing that would have -- I would have
9 deposed a witness to testify as to the amount of
10 the unpaid -- of the amounts they were alleging
11 either monthly, quarterly, yearly, calculating the
12 interest. So there would have been -- we were at
13 the summary judgment stage, not trial stage.

14 Q. And you didn't take any depositions
15 prior to summary judgment?

16 A. No.

17 Q. Or kind of perhaps summary judgment
18 continued for depositions?

19 A. No, the amount of the -- my
20 understanding, the amount of the debt was under
21 \$30,000, so I'm not even sure that we could have
22 even done depositions because of the amount of the
23 underlying debt. But no, we had not yet done
24 depositions. I think I did ask for additional time
25 to do additional discovery within the response to

1 the motion for summary judgment.

2 Q. Okay. Which I don't think -- well,
3 obviously the Court -- well, you went through, but
4 obviously the Court would have denied it, it seems.

5 All right. The --

6 A. I mean, yeah, I mean, I guess that's
7 your opinion, not mine.

8 Q. Well, she didn't continue --

9 A. Well, that's because she didn't like
10 Drew. There are plenty of people that don't like
11 Drew.

12 Q. No, but a last -- just to confirm that,
13 that nothing else was presented in opposition to
14 the liability issue on plaintiff's motion for
15 summary judgment. The only thing that was done,
16 this motion for summary judgment pending, was a
17 motion for sanctions filed and the filing of this
18 case; is that correct?

19 A. No. In fact, we filed the memorandum
20 in response.

21 Q. Other than the memorandum, if there's
22 any discovery or evidence presented to oppose the
23 motion for summary judgment.

24 A. We did. There was one, two, three,
25 four, five exhibits to my memo.

1 Q. Okay. And I'll share --

2 A. Which includes the pictures and the
3 covenants.

4 Q. And I'll share my screen just to pull
5 that up. This will be Defendant's 7, I believe.

6 (GAMBRELL EXHIBIT 7, memorandum in
7 opposition to Plaintiff's motion for summary
8 judgment, was marked for identification.)

9 BY MR. MASCIALE:

10 Q. So yes, a couple of pictures. Were
11 these ever produced in discovery or authenticated
12 in any way?

13 A. Well, again, this is a motion -- this
14 is a memo in response.

15 Q. So it's not evidence, is what you're
16 saying?

17 A. I mean, did we do an affidavit?

18 Q. Let me see.

19 A. I don't recall that we did because I
20 think I remember having issues with getting her
21 signature.

22 Q. Yeah, I don't see an affidavit. At
23 least --

24 MR. RADEKER: Not to interrupt the
25 questioning. I can hang out for a little longer,

1 but not a lot longer.

2 MR. MASCIALE: Yeah, I'm almost done.

3 MR. RADEKER: Okay.

4 BY MR. MASCIALE:

5 Q. So there --

6 A. Yeah, there were 28 pictures under one.
7 The covenants were there, and we filed a couple of
8 cases. So no, we must not -- I think we intended
9 to do an affidavit, but there was logistical issues
10 getting it done, so -- but, no, we filed it -- we
11 filed a memo in opposition and also exhibits.
12 Because again, the relief sought in the complaint
13 was not just the collection of the debt, but
14 foreclosure, to foreclose -- not -- there wasn't a
15 -- understand that the complaint didn't seek a
16 breach of contract. It didn't seek promissory
17 estoppel. It sought foreclosure as the cause of
18 action in remedy.

19 So again, you can have a valid debt,
20 but an improper collection method and prevail under
21 that just like you can have a valid debt, but then
22 fail under the statute of limitations for other
23 defenses. So in other words, we had defenses to
24 the complaint as alleged by the plaintiff. We're
25 not -- I'm not required, as a defense, to draft

1 their complaint to avoid my defenses. So we were
2 responding to the complaint as alleged, not -- in
3 fact, I think there was even -- I said there was a
4 discussion about, hey, about that the cause of
5 action was flawed to begin with. There is no lien,
6 equitable lien, yet because there's no established
7 debt as a matter of law. There's an alleged debt.

8 Q. Well, and that's what I'm getting at.
9 Would you -- I mean, you would agree that there was
10 no evidence presented to the Court to dispute that
11 alleged debt?

12 A. There was no evidence produced of the
13 alleged debt. I mean, the only thing that we had
14 was the summons and complaint.

15 Q. Well, there is a -- and I'll submit
16 that the summary judgment order was granted on
17 liability and there will be, I think, further
18 proceedings to determine the exact amount. But to
19 dispute liability for the alleged debt, I think
20 your client admitted to liability for it.

21 A. Again, she recognized that there were
22 certainly assessments that had been levied.
23 Whether she was entirely responsible for every
24 penny --

25 Q. So is it your testimony then she knew

1 she was liable for -- she knew she was liable for
2 the payment of assessments?

3 A. For assessments in general, right. In
4 other words, she was obligated under the
5 restrictive covenants.

6 Q. Okay.

7 A. But whether the exact -- she wasn't
8 saying that she was never responsible to pay
9 assessments at all. It was whether the amounts
10 that were alleged by the association were proper
11 and there had been -- whether there had been a
12 proper accounting of the exact amounts that she was
13 owed versus whether there was any sort of offset
14 versus money that she had had to spend to fix
15 common elements and/or her unit.

16 Q. Okay. I think that is -- let me see.
17 Actually, last question: Have you spoken with
18 anyone else since -- or regarding the foreclosure
19 case or this case that we're here for today since
20 you withdrew as counsel for Ms. Poole?

21 A. No.

22 Q. Okay. Have you spoken with Ms. Poole?

23 A. No, not since -- not since the day I
24 told her I was leaving the firm and suggested that
25 she contact Drew.

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1 MR. MASCIALE: Okay. All right. Well,
2 I think that's all I have. I appreciate your time
3 today. And sorry it went a little longer than
4 anticipated, Drew.

5 MR. RADEKER: It's all good. I don't
6 have any questions.

7 (The witness, after having been advised
8 of his right to read and sign this transcript,
9 waives that right.)

10 (The deposition was concluded at 2:23
11 p.m.)
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1 CERTIFICATE OF REPORTER

2
3 I, Lauren A. Balogh, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 17th day of November,
13 2021 at Murrells Inlet, Horry County, South
14 Carolina.



23 _____
24 Lauren A. Balogh

25 My Commission expires

March 19, 2030

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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